AGENDA
Committee on Public Safety
Friday, June 10, 2016 @ 3:30 p.m.
City Council Chambers, 10th Floor, City Hall

Councilmember Carol Wood, Chair
Councilmember Adam Hussain, Vice Chair
Councilmember Kathie Dunbar, Member

1. **Call to Order**

2. **Roll Call**

3. **Minutes**
   - May 27, 2016

4. **Public Comment on Agenda Items**

5. **Discussion/Action:**
   A.) UPDATE – Community Police Officers with LPD

   B.) DISCUSSION – Medical Marihuana Licensing Ordinance

6. **Other**

7. **Place on File**
   - Communication from Jamaine Dickens regarding Proposed Medical Marihuana Ordinance/Drive Thru Service Windows

8. **Adjourn**

- Pending – Continued discussion regarding 3200 S. Washington
- Pending – Discussion regarding lead

COMMITTEE On Public Safety

DATE 6/10/16

Please print

NAME	ADDRESS	EMAIL	Representing	PHONE
Claude Beauvers	3010 Boston BLVD			882-0015
Deb Parrish				
Elaine Womboldt	4815 Tressa LANSING	emwomboldt@ comcast	RSL	393-0317
Gary Frisell	1604 1/2 Aurelius Holt	[illegible] @ yahoo.com		894-7653
Mona Sheeran	916 Bangham St Lans, M. 48906			
Joan Knapp	515 Dunlap St Lansing MI			
Nate Patrick				
David Brogren	1270 Hagadorn Mason, MI		CPU	
Brant Jottagen	2875 Northwind Dr. East Lansing, MI			
Margaret Prince			RSL	394-1196

MINUTES
Committee on Public Safety
Friday, June 10, 2016 @ 3:30 p.m.
Tenth Floor, City Council Chambers – Lansing City Hall

CALL TO ORDER
The meeting called to order at 3:39 p.m.

ROLL CALL
Councilmember Carol Wood, Chair
Councilmember Adam Hussain, Vice Chair – Arrived 3:48 p.m.
Councilmember Kathie Dunbar, Member

OTHERS PRESENT
Courtney Vincent, Council Administrative Assistant
Kristen Simmons, Assistant City Attorney
Mark Dotson, Deputy City Attorney
Joe Abood, Interim City Attorney
Councilmember Patricia Spitzley, Lansing City Council
Chief Mike Yankowski, Lansing Police Department
Claude Beavers
Deb Parrish
Elaine Womboldt, Rejuvenate South Lansing
Kory Friesell
Mona Decess
Joan Knapp
Nate Patrick
David Brogren, Cannabis Patients United
Brant Johnson
Mary Ann Prince, Rejuvenate South Lansing
Richard Williams
Spencer Soka

Minutes
Councilmember Wood passed the gavel to Councilmember Dunbar.

MOTION BY COUNCILMEMBER WOOD TO APPROVE THE MINUTES OF MAY 27, 2016 AS PRESENTED. MOTION CARRIED 2-0.

Councilmember Dunbar passed the gavel back to Councilmember Wood.

Public Comment:

Councilmember Wood stated public comment would be taken at the end of the discussion unless someone was unable to stay for the meeting. If so she would take comments now. No one wished to speak.

Councilmember Wood also stated the Committee would not be going through the second draft of the Medical Marihuana Ordinance line-by-line at this time and would explain when the item came up.

Discussion/Action:

UPDATE – Community Police Officers with LPD

Chief Yankowski reported the Community Police Officer (CPO) program had been expanded with the creation of the Community Services Unit within the Lansing Police Department (LPD). Sgt. Matt Kreft is the sergeant assigned to overseeing the unit and eight of the nine CPO positions have been filled. The ninth position, for the Potter/Walsh Neighborhood, is anticipated to be filled in September. Hours for the CPO's vary, but peak hours will be from 11:00 a.m. to 9:00 p.m. Chief Yankowski explained the areas selected for a CPO were determined through analysis of the number of calls for service, incidents of crime, historical boundaries, and the need of the area, as well as utilizing the Data-Driven Approaches to Crime and Traffic Safety (DDACTS) program. CPO's will perform foot and bicycle patrols in the neighborhoods and be involved in community events. Chief Yankowski then discussed other methods of officer involvement in the community such as school resource officers assisting CPO's in different neighborhoods during the summer, the Gang Resistance Education and Training (G.R.E.A.T.) Program, the Police and Fire Leadership Academy, and the Explorer Program.

Mr. Frisell asked what would be done in the neighborhoods between the hours of 9:00 p.m. and 3:00 a.m. when the CPO's were off duty. Chief Yankowski explained the presence of CPO's is in addition to resources already in the area. He also asked for residents to report when they witness a crime, explaining LPD uses a data-driven approach and a hotspot policing model.

Ms. Parrish asked if residents could email their CPO about any issues that may arise. Chief Yankowski replied residents could email their CPO or they could email Sgt. Kreft should they not receive a response from the CPO.

Ms. Womboldt expressed her support of the CPO program and remarked on the good impression Officer Arnold made while speaking at an Old Everett Neighborhood Association meeting.

DISCUSSION – Medical Marihuana Licensing Ordinance

Councilmember Wood requested attendees show respect and decorum towards each other both during and after the meeting. She then stated the Committee had been informed by the City Attorney's Office that, after additional research and reviewing recent court cases, some provisions of the second draft of the Medical Marihuana Ordinance written by the City Attorney's office may not be enforceable or legal. It is imperative to the Committee we have an ordinance that is enforceable and comports with the State law. With this in mind, the City Attorney's Office is creating a third draft incorporating aspects of the Ann Arbor and Detroit ordinances. Councilmember Wood stated the Committee will not meet on June 24, 2016; the next meeting and the deadline for the third draft will be July 8, 2016. The Committee is very upset that they have been working on this version of the ordinance since April and now we are hearing about the issues. If the Committee does not have an ordinance that is enforceable on July 8th then the Committee will be working to see that dispensaries that are acting illegally are closed.

Mr. Abood explained recent rulings by the Court of Appeals have clarified that the only transfers allowed under the MMMA are between a caregiver and their registered patient, and have also further indicated the immunities granted under the MMMA. Because of this, Mr. Abood stated the second draft of the Medical Marihuana Ordinance falls short of its attempt to bring the industry out of the shadows and into the business corridor without infringing on patients' rights.

Councilmember Dunbar asked which findings negated provisions in the draft ordinance. Mr. Abood explained the ruling made clear that caregiver to caregiver transfers were not allowed. He also noted the largest aspect of those cases pertained to caregivers and patients operating out of their personal residences.

Councilmember Hussain asked if there was a commitment by the City Attorney's Office to shut down dispensaries if a revised ordinance has not been presented to the Committee by July 8th. Mr. Abood confirmed the timeline for the third draft was July 8, 2016, and stated his office will enforce all City ordinances to the extent the LPD or other Departments submit complaints. He explained his office had anticipated the need for several drafts of the ordinance based on proposed legislation and rulings on court cases, and any such changes before July 8th could change the direction of the ordinance again.

Councilmember Wood asked the City Attorney's Office to submit the draft ordinance to the committee by July 6th to allow time for review and dissemination to the public.

Place on File

Councilmember Wood noted the Committee had received letters from DMC Strategies and Cannabis Patients United as well as an email from Mr. and Mrs. Weathers.

MOTION BY COUNCILMEMBER DUNBAR TO ACKNOWLEDGE RECEIPT OF THE ITEMS LISTED BELOW. MOTION CARRIED 3-0.

- Communication from Jamaine Dickens of DMC Strategies regarding Proposed Medical Marihuana Ordinance/Drive Thru Service Windows
- Letter from Cannabis Patients United regarding the proposed Medical Marihuana Ordinance
- Email from Mr. and Mrs. Weathers in support of OMG! Our Miracle Garden LLC

Public Comment on Agenda Items

Councilmember Hussain asked Mr. Abood if any complaints had been received regarding dispensaries opening after the implementation of the moratorium and whether those complaints were being investigated. Mr. Abood replied that very few complaints had been received and appropriate letters were being sent to receive more information. Councilmember Wood remarked it would be helpful if those making complaints could provide the address of the facility in question when making a complaint.

Mr. Beavers asked whether the provision in the second draft of the ordinance prohibiting anyone with a felony conviction in the last ten years from obtaining a license pertained only to someone wanting to dispense medical marihuana or if it applied to any other instance where someone would like to act but is restricted because of a prison record. He then asked about the provisions in the draft discussing debts to the City and expressed his opposition to anyone with outstanding debt to the City being able to receive a license. He expressed concern over the use of the word "may" instead of "shall" throughout the draft ordinance. He also expressed concern over the request for what he called "public policing" and the possibility of it creating vigilante groups.

Ms. Parrish expressed disappointment in the progress of the ordinance. She asked why the City could not certify the dispensaries so they would know who owned them. She asked for the names of the court cases being referenced in the meeting. The two cases being referenced are People of the State of Michigan versus Ryan Michael Bylsma and People of the State of Michigan versus David James Overholt, Jr.

Ms. Womboldt expressed extreme disappointment in the progress of enacting an ordinance and her concern that the rights of medical marihuana patients were being placed above the rights of others. She stressed residents did not want marihuana grown and dispensed in their neighborhoods; they wanted equal rights for quality of life issues. She supported closing the dispensaries.

Mr. Frisell discussed the safety of medical marihuana, both for the patient and those around the patient, as opposed to the danger of other medications that posed the risk of harmful side effects to the patient and posed a hazard to children who might accidentally consume them. Councilmember Wood reiterated the goal of the ordinance was to ensure patients had a safe place to obtain the medical marihuana they need.

Ms. Decess expressed concern over traffic and odor issues stemming from two caregivers in her neighborhood.

Mr. Brogren encouraged the City Council to utilize existing ordinances to address issues such as odor instead of creating a new ordinance. Councilmember Wood noted there was currently an ordinance regarding home occupation that addressed odors, noise, and industrial equipment, and the City Council would look at stronger enforcement of that ordinance.

Ms. Prince expressed her support of shutting down all dispensaries in the city.

Mr. Williams asked if the home occupation ordinance was currently being enforced. Chief Yankowski explained investigations were conducted on complaints as they were received, but there has not been much success with prosecution.

Mr. Soka suggested requiring dispensary owners to fill out an application, submit to a background check, and provide a deposit in order for the City to determine which facilities were serious in their operations.

Councilmember Dunbar noted the rulings of the Court of Appeals meant a business model where multiple caregivers share one location and tend only to their patients did not fit the original intent of the legislation. She explained shutting down dispensaries would put medical marihuana back into the neighborhoods, and the City would need to be prepared for that eventuality. She then asked how enforcement would be handled. Mr. Abood agreed it was a tough problem and that it would make transfers more likely to occur in neighborhoods instead of business corridors. Chief Yankowski noted that currently officers looked into complaints with a house visit or a knock and talk, but many attempts to prosecute have failed because of the complications involved and the changing laws.

Other:
No other topics.

ADJOURN
The meeting was adjourned at 4:55 p.m.
Submitted by,
Lansing City Council
Approved July 8, 2016

MINUTES
Committee on Public Safety
Friday, May 27, 2016 @ 3:30 p.m.
Tenth Floor, City Council Chambers – Lansing City Hall

CALL TO ORDER
The meeting called to order at 3:31 p.m.

ROLL CALL
Councilmember Carol Wood, Chair
Councilmember Adam Hussain, Vice Chair
Councilmember Kathie Dunbar, Member - Absent

OTHERS PRESENT
Courtney Vincent, Council Administrative Assistant
Kristen Simmons, Assistant City Attorney
Lt. Hung Tran, Lansing Police Department
Deb Parrish
Gary Casteel
Cinda Eltzroth
Doug Mains, Dykema Law Firm representing Lansing Medical Cannabis Guild
Elaine Womboldt, Rejuvenating South Lansing
Hilary Vigil
Max Hutchison
Jake Rufenacht
Linda Appling
Elvis Malcolm

Minutes
MOTION BY COUNCILMEMBER HUSSAIN TO APPROVE THE MINUTES OF MAY 12, 2016 AND MAY 13, 2016 AS PRESENTED. MOTION CARRIED 2-0.

Public Comment:
Councilmember Wood asked if anyone present wished to speak on the agenda item Noise Ordinance. No one present wished to comment. Councilmember Wood asked for any attendees who wished to comment on the Medical Marihuana Ordinance to please write their name on the attendance sheet. She stated she would prefer public comment on the Medical Marihuana Licensing and Operations Ordinance after Committee discussion. If anyone could not stay for the meeting they could make their comments now.

Discussion/Action:

DISCUSSION – Noise Ordinance Enforcement

Councilmember Wood noted the gentleman who had requested information on enforcement of the City of Lansing's Noise Ordinance during the May 23rd City Council meeting was not in attendance today. The gentleman had experienced a great deal of noise on a regular basis from motorcycle and auto traffic along with load music near his home between the hours of 2:00 a.m. and 5:00 a.m. and was concerned whether the City had a noise ordinance and if it was enforced.

Lt. Tran stated the City had a Noise Ordinance which does address noise that disturbed the peace. Lansing Police Department (LPD) officers can issue citations if they witness a violation and they will address a complaint made regarding noise, but resources were not available for an officer to watch a specific area waiting for a violation to occur. Noise ordinance is a lower propriety call but it will be responded too when resources allow.

Councilmember Wood asked how aggressively LPD enforced the ordinance and whether a sting operation could be conducted. Lt. Tran replied the ordinance was enforced the same as any other City ordinance and explained response time depended on the volume and priority of calls received. Ms. Simmons agreed with Lt. Tran. She noted warmer weather corresponded with an increase in noise complaints and doubted there were adequate resources within LPD to conduct a sting operation due to low staffing levels. Ms. Simmons also stated the City Attorney's Office followed through with prosecution of noise ordinance violations as normal.

DISCUSSION – Medical Marihuana Licensing Ordinance

Councilmember Wood stated the Committee discussed questions provided to the Interim City Attorney at the last meeting and today they would review the second draft of the ordinance line by line. Questions asked during this meeting will be answered by the City Attorney's Office at the next Committee meeting.

Page 1 - The Committee noted inconsistencies in capitalization of section titles on lines 3-14. Councilmember Wood asked whether information regarding federal laws on Medical Marihuana should be kept or researched further considering the possibility marihuana being reclassified as a Schedule 2 substance. Ms. Simmons stated it was in the best interest of the City to keep that language in the ordinance. The terms "dispensaries" and "home cultivation" on line 17 should be changed to "provisioning centers" and "home occupation" respectively for consistency throughout the ordinance. Councilmember Wood mentioned Councilmember Dunbar's suggestion to change "home occupation" to "home cultivation" during the last meeting. Lines 18 and 28 should read "Michigan Medical Marihuana Act" instead of "Michigan Marihuana Act."

Page 2 – A space is required between "(b)" and "Any" on line 5 and between "(c)" and "The" on line 6. Councilmember Hussain asked if there was any further information on the definition of "Provider" on line 12, as the entry appeared to end abruptly. Ms. Simmons said she would confirm the definitions in this section correlated with the MMMA. The Committee agreed with Councilmember Dunbar's suggestion to change "home occupation" to "home cultivation" throughout the ordinance. Ms. Simmons stated she would research the ability to use that particular phrase, and noted it might already be included in a revised draft currently being worked on by the City Attorney's Office. The phrase "primary residence" from line 17 should be changed to "principal residence" for consistency throughout the ordinance. The word "act" should be capitalized in line 23, and the second use of "Michigan medical marihuana act" should be capitalized on line 25. Councilmember Wood asked whether the mention of paraphernalia on line 28 would affect a store dealing exclusively in paraphernalia, requesting the intention of this reference compare to the locations where caregivers either grow or

exchange product. Ms. Simmons agreed and stated the language would be cleaned up. Councilmember Hussain noted line 28 should read “paraphernalia relating to”, not “paraphernalia relations to.”

Page 3 – Councilmember Hussain pointed out the inconsistency regarding the use of “principal residence” in line 6 versus “primary residence.” The word “card” should be capitalized on line 12. The Committee asked why line 23 regarding proof of operation was part of the ordinance when it was stated there would be no grandfathering of current dispensaries. Ms. Simmons replied she did not know why that requirement had been left in, and she did not think it was in the new draft. Councilmember Hussain asked for clarification on the provision in line 26 regarding caregiver licenses. Councilmember Wood explained the facility would have a license to operate that would list the caregivers at the location and caregivers would then obtain a license and would that be charge or free if they were listed on the facility license.

Page 4 – The Committee discussed “principal residence” versus “primary residence” for line 1 and wanted “home occupation” changed to “home cultivation.” Councilmember Hussain asked why the City had opted to require licenses for home cultivation when there were other options such as how the City of Ann Arbor requires registration for home cultivation instead of requiring a license. Ms. Simmons said she did not have an answer and the Committee asked her to research the issue. Councilmember Hussain asked if the statement made in lines 3-4 comported with the MMMA and the Committee requested Ms. Simmons to research the answer. The title “city clerk” should be capitalized on line 15. Councilmember Hussain suggested adding language in the provision from lines 19-21 to help the City Clerk and individuals plan for the influx of annual renewals such as requiring renewal no sooner than 90 days and no later than 30 days prior to expiration. Councilmember Wood suggested asking the City Clerk for his recommendation. The word “act” should be capitalized on line 25. A space should be added between “(f)” and “Each” on line 33.

Page 5 – The word “council” should be capitalized on line 4 and “city council” should be capitalized on line 5. The section reading “against and portion” on line 11 should read “against any portion.” The word “center” should be changed to “centers” on line 21. The additional space between “(8) and “Specify” should be removed on line 26 for formatting consistency throughout the document. The phrase “Government issued” should be changed to “government-issued” on line 34. Councilmember Hussain asked if testing procedures would be addressed in the ordinance or a labeling requirement added to indicate no product oversight. Councilmember Wood requested Ms. Simmons to provide information on the testing element. Councilmember Hussain asked if language requiring labels to indicate whether or not edible products were made in a licensed kitchen could be added to lines 15-17, which addressed labeling requirements. Councilmember Wood said they would have to ask the City Attorney’s Office for direction because it might be an issue addressed by the Ingham County Health Department. Councilmember Wood asked if the statement required from the provision on line 39 should be notarized at the time of submission. Ms. Simmons said she would confirm whether the required statement would also include an authorization page to run a background check, which would assert that information provided is true. Councilmember Wood asked if background checks would be national or local. Ms. Simmons replied she would need to confirm whether background checks performed by LPD extended nationally.

Page 6 – Councilmember Hussain asked why the ordinances required the city be named as an additional insured party as stated in the provision on lines 5-6. He also asked about the patient education plan mentioned in line 21. Councilmember Wood clarified the language in parenthesis was a note referring to the education plan required in the first ordinance which would have been reviewed, not established, by Council. She was not sure why the City Attorney’s Office had changed it. The Committee requested the language in lines 21-22 be

cleaned up. There should be a space between “(18)” and “Patient” and the word “plan” should be capitalized on line 21. Councilmember Hussain mentioned some residents were requesting additional zoning restrictions such as prohibiting provisioning centers near churches. He asked if additional restrictions could be added or if the MMMA precluded such limitations. Councilmember Wood noted the Interim City Attorney had stated they would risk limiting access to provisioning centers if the zoning requirements were too restrictive. She also explained there had previously been a requirement addressing the minimum space allowed between two provisioning centers, which is not present in the current draft. The Committee asked the City Attorney’s Office to review that section. Councilmember Wood asked for information on why line 30 required the Council to establish a sanitation plan instead of reviewing one provided by the appliant. Councilmember Hussain questioned how the City would guard against litigation should a situation arise where the number of applicants surpasses the maximum allowed number of licensees and all meet every requirement for a license. He noted the City of Ann Arbor created a Medical Marihuana Licensing Board. Councilmember Wood replied the City Attorney’s Office is currently looking into the issue.

Page 7 – The Committee requested consistency regarding the indentation on the second line of each section. Line 3 was indented but lines 5, 7, 9, and others were not. The phrase “Fire Department” on line 2 should be changed to “Lansing Fire Department” and “Police Department” on line 7 should be changed to “Lansing Police Department”. Councilmember Wood noted the fees mentioned in line 20 could not exceed the cost of conducting business, would be set by resolution, and should be available for review by the date of the public hearing for the ordinance. Councilmember Hussain stated he was not looking to make drastic changes to the draft ordinance out of concern it would make the ordinance unenforceable. He also noted many of the patients, dispensary owners, and patient advocates he has spoken with believed the ordinance comports with the MMMA and is enforceable. The Committee requested the City Attorney’s Office reword line 39 out of concern the specification of “video recordings” was too restrictive and excluded advances in visual surveillance technology.

Page 8 – Councilmember Hussain asked Ms. Simmons to address the provision on lines 2-3, which prohibit the display or transfer of Medical Marihuana in an area accessible to the general public. Dispensary owners had indicated to him the measure would restrict their business. Ms. Simmons clarified the provision in the ordinance referred to public or common areas; Medical Marihuana could be on display in the non-public area designated for product transfer. The term “customer” in line 6 should be removed, as exchanges allowed under the MMMA are only allowed between a caregiver and a patient. Ms. Simmons agreed the term “customer” should be removed. A space is needed between “(l)” and “All” on line 18. The second semicolon should be removed at the end of line 22. Spaces need to be added between the subsection letter and the first word of the sentence on lines 23, 24, 26, and 28.

Page 9 – The Committee requested the name of the caregiver should be included as a requirement for the provision on lines 3-4. The word “center” on line 13 should be “centers.” The word “the” should be inserted before “facility” in line 10. Councilmember Wood stated the Committee needed to decide whether or not to specify hours of operation in the ordinance. Councilmember Hussain supported specifying hours of operation if the Interim City Attorney supported the provision and it is enforceable. On the question brought up during the last meeting of prohibiting green crosses, the Committee expressed more concern over the use of a symbol of a marihuana leaf. Councilmember Wood asked Ms. Simmons for additional information on the new draft she had mentioned. Ms. Simmons replied the draft took input from the line-by-line review of the first draft but she did not know when it would be available for review by the Committee.

Councilmember Wood stopped the line-by-line review of the ordinance at line 18 of page 9. The next meeting would continue the review starting at Section 1301.06 – Minimum Operations Standards for Medical Marihuana Home Occupation on line 19.

Public Comment on Agenda Items

Councilmember Wood opened the floor for public comment.

Ms. Parrish expressed concern regarding marketing by dispensaries to those who were not designated patients for a specific caregiver and stressed the need to crack down on Medical Marihuana cards not obtained by a doctor of record.

Mr. Casteel expressed concern regarding the misuse of Medical Marihuana patient cards because the cards lack a photo of the patient. He reported witnessing people passing patient cards to others for the purchase of marihuana at dispensaries. He suggested limiting the number of dispensaries to no more than three or four per ward, and he asked if a petition could be started to get rid of dispensaries in Lansing. Councilmember Wood stated the City was working diligently on an ordinance based on and comporting with current State law. Mr. Casteel asked if the City Council could require stricter monitoring of dispensaries. Councilmember Wood replied the licensing ordinance, once completed, would address those issues.

Ms. Eltzroth supported prohibiting provisioning centers near parks and churches and asked the Committee to consider adding those to the zoning requirements. She also supported uniform hours of operation for both provisioning centers and individual caregivers, suggesting the 9:00 a.m. to 5:00 p.m. hours mentioned in the ordinance. Councilmember Wood clarified that those hours pertained to inspections. Ms. Eltzroth asked the Committee to consider the impact to the quality of life for residents of the city because of the effects of the large number of Medical Marihuana establishments.

Mr. Mains stated infused products made with marihuana extract were illegal under the MMMA, making most edible products illegal under state law. He noted the State of Michigan had passed a law addressing what will happen should the federal government change marihuana to a Schedule 2 drug. He stated the Lansing Medical Cannabis Guild supported the creation of an effective and enforceable ordinance, but was concerned about portions of the draft ordinance that may conflict with the MMMA.

Ms. Womboldt expressed support for prohibiting the cultivation of marihuana in neighborhoods and for limiting the number of provisioning centers allowed in the city.

Ms. Appling expressed concern for the unintended consequences that could arise from the ordinance such as increasing the cost of the product and the potential of the restrictions creating a black market for marihuana within the city. She also expressed concern over the potential increase in arrests for petty crimes. She suggested the ordinance should be minimal in terms of nature and scope and should not cause more people to be arrested or go to jail.

Mr. Malcolm asked if the section on page 2, line 28 would affect stores exclusively selling marihuana paraphernalia and have been in business for a number of years. Councilmember Wood stated the provision was not meant to affect those businesses and the language would be clarified. Mr. Malcolm asked where caregivers were supposed to purchase additional product from for their patients if they were prohibited from transferring product in a residence. Councilmember Wood stated recent case law indicated the exchange can only be between a caregiver and a patient, not between caregivers as per the MMMA. Mr. Malcolm asked if page 5, lines 18-24 described a co-op and if they would now be legal. Councilmember Wood replied

it could pertain to a co-op and then requested Ms. Simmons research the question. Mr. Malcolm asked the Committee not to discriminate against the marihuana industry and to impose the same sanctions as they would other businesses. He mentioned the Supreme Court stated the smell of marihuana cannot be deemed offensive to the level described in the draft ordinance. Councilmember Wood noted the provisions regarding odor in the draft ordinance applied to a number of business licenses. Mr. Malcolm asked about limitations on the number of caregivers allowed at a location, the amount of marihuana they would be allowed to possess at that location, and if they would have the right to carry overage. Councilmember Wood stated those issues were currently being researched.

Council Member Wood stated the Committee would continue to move forward with the draft ordinance even if there is movement from State legislature on the bill that has been stuck in committee. The next meeting of the Committee on Public Safety is scheduled for Friday, June 10, 2016, at 3:30 p.m. and will continue the discussion of the second draft of the Medical Marihuana Ordinance. Councilmember Wood invited anyone with questions or concerns to email her so they can be passed to the City Attorney's Office prior to the next meeting.

Other:

Councilmember Wood provided an update on South Washington Park Apartments, 3200 S. Washington Ave. A meeting took place on Wednesday which included the Mayor, four City Council members, the Chair of the LHC Board of Commissioners, and representatives from HUD. The representatives from LHC informed the City the security doors had been fixed and they were considering an ID entry system for the building. It was noted a Community Police Officer would begin working in the neighborhood encompassing the building after May 28th for a three year assignment. State Police had walked through the building and provided recommendations for placement of security cameras to be installed throughout the building. Evictions are being conducted; cleaning staff has been hired to work over weekends to prevent a buildup of trash and debris. The LHC is considering applying for the RAD grant for potential funding for renovations. Another possibility instead of renovations would be tearing down the building and reformatting it. Councilmember Wood noted the Committee had originally intended to have an on-site meeting at South Washington Park, but the meeting was canceled. LHC and HUD have asked to conduct a meeting at the property and inviting the City Council to attend with the goal of looking at solutions and moving forward, HUD representatives do not the rehashing problems already brought to their attention. Councilmember Wood added LHC also wanted to try to reengage the Residents' Council and have asked for help with this from Rejuvenate South Lansing and the Old Everett Neighborhood Association. She stated the update on 3200 S. Washington would remain as pending on the agenda until a meeting has been scheduled and the date announced.

Councilmember Hussain asked if any discussion had occurred during the meeting regarding changes in leadership within LHC. Councilmember Wood stated there were no changes at LHC and the former manager at South Washington Park had been moved to a different facility. She noted that Ed Forrest now working for LHC, a former LPD Captain was also spending over 50% of his time at the building. Councilmember Hussain expressed concern over the relocating of the former property manager and then asked if there was a timeline for the meeting. Councilmember Wood stated no timeline has been provided but HUD was scheduled to meet next Tuesday with LHC regarding the recovery plan. The City of Lansing was required to sign off on the recovery agreement because the City appoints the board for the LHC, but HUD stated that the City had no liability as part of the recovery plan only LHC. Councilmember Hussain expressed concern the issues reported by residents of the building were not being addressed. Councilmember Wood replied HUD had made it clear they understood there were issues with the building, and she hoped they could encourage HUD to

allow time for the validation of issues raised by residents in order to rebuild trust between the residents and the system.

Councilmember Wood then addressed the pending update on Community Police Officers. Sgt. Matt Kreft with LPD was now in charge of the Community Police Officers and an invitation would be extended to him to attend the next Committee meeting for an update on the program.

Place on File

No action was taken on the following item to be placed on file:

- Communication from Jamaine Dickens regarding Proposed Medical Marihuana Ordinance/Drive Thru Service Windows

ADJOURN

The meeting was adjourned at 5:19 p.m.
Submitted by,
Courtney Vincent, Administrative Assistant
Lansing City Council
Approved: _____

Community Police Officers

Name	Location	Phone	Email
Sgt. Matthew Kreft		517-483-4613	matthew.kreft@lansingmi.gov
Ofc. Lance Leiter	Baker/Donora Neighborhood	517-256-9013	lance.leiter@lansingmi.gov
Ofc. Jon LaCross	Moores River Neighborhood	517-230-6002	jonathan.lacross@lansingmi.gov
Ofc. Trevor Arnold	Washington Ave. Corridor	517-648-5633	trevor.arnold@lansingmi.gov
Ofc. Eric Boswell	Northtown Neighborhood	x2695*	eric.boswell@lansingmi.gov
Ofc. Sarah Willson	Genesee Neighborhood	x2644*	sarah.willson@lansingmi.gov
Ofc. Matthew Salmon	Downtown Stadium Dist.	517-256-9013	matthew.salmon@lansingmi.gov
Ofc. Garrett Hamilton	Kalamazoo St. Corridor	517-230-6002	garrett.hamilton@lansingmi.gov

*To call: Dial 517-483-6868 then enter the 4-digit extension. If officer is away from the desk, please leave a voicemail.

Always call 9-1-1 during an emergency

CITY CODE OF ORDINANCES CHAPTER 1301.

MEDICAL MARIHUANA LICENSING AND OPERATIONS

1301.01 -LEGISLATIVE INTENT

The City intends to license and regulate medical marihuana facilities, dispensaries and home cultivation to the extent they are permitted under the Michigan Marihuana Act. The City does not intend that licensing and regulation under this chapter be construed as a finding that such operations are legal under state or federal law. Although some specific uses of marihuana are allowed by the Michigan Marihuana Act, marihuana continues to be classified as a Schedule 1 controlled substance under federal law, making it unlawful under federal law to manufacture, distribute, dispense or provide. By requiring a license and compliance with requirements set forth in this chapter, the City intends to protect to the extent possible, the public health, safety and welfare of the residents of and visitors to the City, including registered qualifying patients and their caregivers, especially from harm that might result from those who may choose to conduct medical marihuana operations in ways that are inconsistent with the mandates of this chapter.

This chapter permits activities as described in the Michigan Marihuana Act. Nothing in this chapter shall be construed as allowing persons to engage in conduct that endangers others or to allow the use, cultivation, or growth of medical marihuana not in strict accordance with what is authorized by the Act.

1301.02 – DEFINTITIONS

For the purposes of this chapter:

(a) Any term defined by the Michigan Medical Marihuana Act, MCL 333.26421 et seq., shall have the definition given in the Michigan Medical Marihuana Act.

(b)Any term defined by 21 USC 860(e) shall have the definition given by 21 USC 860(e).

(c)The following terms shall have the definitions given:

"Department" means the State of Michigan Department of Community Health.

"Provisioning Center" means a location where one or more primary caregivers store and distribute medical marihuana out of a building or structure.

"Provide/Provision" means the physical transfer of any amount of marihuana in any form from a primary caregiver to a qualifying patient.

"Provider" means a primary caregiver who engages in any one or more acts of providing.

"Facility" means a commercial business having a separate or independent postal address where medical marihuana is cultivated and also may be provided.

"Home Occupation" means the residential cultivation of Medical Marihuana by a Qualifying Patient as defined by the Act, in compliance with the general rules of the Department of Licensing and Regulatory Affairs, within a single family dwelling that is the Registered Qualifying Patient's primary residence and in which the cultivation is in conformity with the restrictions and regulations contained in the Act, this Chapter and any State regulations developed by the Michigan Department of Licensing and Regulatory Affairs (LARA). Medical Marihuana Home Cultivation is prohibited in any multi-family dwelling.

"Licensee" means a person holding a city issued license related to medical marihuana operations.

"Medical Marihuana" means any marihuana intended for medical use that meets all requirements for medical marihuana under the act and excludes any form of marihuana inconsistent with the definition of usable marihuana under the Act; 1976 PA 368, MCL 333.7106.

"Michigan Medical Marihuana Act" or "Act" means the Michigan medical marihuana act, 2008 Initiated Law, MCL 333.26421 to 333.26430.

"Medical use of Marihuana " means the acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marihuana, or paraphernalia relations to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition.

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"Primary caregiver" or "caregiver" means a person as defined under MCL 333.26423(g) of the Act, who had been issued and possesses a Registry Identification Card under the Act and provides medical marihuana to a qualifying patient other than themselves. The cultivation of marihuana by a caregiver and the provision of caregiver services relating to marihuana use shall be permitted in accordance with the Act.

"Principal residence" means the place where the person resides more than half of the calendar year.

"Qualifying patient" or "patient" means a person who has been diagnosed by a physician as having a debilitating medical condition and who has been issued and possesses a Registry Identification Card under the Act.

"Restricted/Limited Access Area" means, a building, room or other area under the control of the licensee with access limited to qualifying patients or primary caregivers.

"Registry Identification card" means the document defined by the Michigan Medical Marihuana Act.

1301.03 -LICENSURE REQUIREMENTS.

(a) The cultivation of marihuana by a caregiver or any other person permitted under the Act, and the provision of caregiver services relating to medical marihuana use, shall be permitted in accordance with the Act. No cultivation, provisioning , or other assistance to a patient shall be lawful at a location unless such location for such cultivation, provisioning, and assistance shall have been licensed under this Chapter.

(1) A facility or provisioning center in operation on the effective date of this ordinance may continue operations without a license only if the operator applies for a license within thirty (30) days of the effective date of this ordinance and if no zoning, permit, or license applications or approvals have already been denied. Proof of operation before implementation of this ordinance shall be provided at the time of applying.

(b) Each caregiver operating at a facility or provisioning center shall obtain a separate license prior to operating.

(c) The following locations shall require licensure:

(1) A facility used for the cultivation of marihuana by caregivers or patients permitted under the Act;

(2) A provisioning center or facility used for distribution;

(3) Any facility used to provide any other assistance to patients by caregivers permitted under the Act relating to medical marihuana;

(4) The principal residence where the residence is being ultized as a home occupation..

(d) Operating as a primary caregiver, whereas medical marihuana is provided by the primary caregiver to another, is prohibited in a residence.

(e) Any portion of the structure where energy usage exceeds typical residential use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subjected to inspection and approval by the fire department to insure compliance with the city's adopted International Fire Code.

(f) All premises required to be licensed shall be open for inspection upon request by the city's appointed inspectors, building officials, fire department, and/or law enforcement officials for compliance with all applicable laws and rules during normal business hours of 9:00 a.m. until 5:00 p.m. or at such times as anyone is present on the premises.

1301.04 -APPLICATION FOR LICENSE.

(a) An application for an annual license or renewal of a previously issued license under this section shall be submitted to the city clerk. A license shall be issued or renewed upon payment of the required fee, submission of a completed application in compliance with the provisions of this chapter, and compliance with all provisions and requirements of this chapter. There will be no license fee for home occupation operations.

(b) An application renewal shall be submitted annually. Applications to renew a license under this chapter shall be filed at least 30 days prior to the date of expiration. Such renewal shall be accompanied by the annual fee.

(c) An application shall include the names of all caregivers operating in the same facility/provisioning center or on the same premises and a copy of the caregiver's state issued registry identification card.

(d) Pursuant to the act, primary caregivers shall not have any felony convictions within the past ten years and shall not have ever been convicted of a felony involving illegal drugs or a felony that is an assaultive crime. If a criminal background check reveals any such felony conviction, no license shall be issued and any existing license shall be revoked.

(e) No license shall be issued and/or an existing license may be revoked if applicant or business owes to the City any outstanding back taxes, fines, fees or liens.

(f)Each facility or provisioning center license application required by this chapter shall include the following:

(1) The marihuana facility or provisioning center history of the applicant; whether such person has had a business license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.

(2) The address of the precise premises at which there shall be possession, cultivation, distribution or other assistance in the use of medical marihuana.

(3) If applicable, the initial application fee or renewal fee as established by council; thereafter they shall be established by annual resolution of the city council.

(4) A description of the products and services to be provided by the facility/provisioning center, including retail sales of any item.

(5) A plan for the disposal of any medical marihuana in any form that has not been provided pursuant to the Act of this chapter. This plan shall protect against and portion being possessed or ingested by a person or animal. Disposal by burning or introduction into the sewage system is prohibited.

(6) Procedures for testing contaminants, including mold and labeling of products that include marihuana in any form.

(7) Describe the enclosed, locked facility in which any and all cultivation of medical marihuana is proposed to occur, or where medical marihuana is stored, with such description including: location of building, precise measurements in feet of the floor dimensions and heights; the security plan for the facility; and in the case with facilities or provisioning center with more than one primary caregiver, a declaration that each caregiver will only have access to the medical marihuana that is identified to that caregiver and to the individual qualified patients associated with the caregiver in accordance with the Act.

(8) Specify the number of patients to be assisted by each caregiver, separating the number of patients for whom medical marihuana is proposed to be cultivated from the number of patients to be otherwise assisted on the premises.

(9) If the applicant is an individual, the applicant's name, date of birth, physical address, copy of photo identification, email address, and one or more phone numbers, including emergency contact information;

(10) If the applicant is not an individual, the names, dates of birth, physical addresses, copy of Government issued photo identification, email addresses, and one or more phone numbers of each stakeholder of the applicant, including designation of the highest ranking stakeholder as an emergency contact person and contact information for the emergency contact person. In addition, the articles of incorporation, assumed name registration documents, Internal Revenue Service SS-4 EIN confirmation letter, and the operating agreement of the applicant;

(11) A statement with respect to each person named on the application that he or she has not been convicted of or pled guilty to a felony involving controlled substances or assaultive crimes preceding the date of application and a signed release authorizing the Lansing Police Department to perform a criminal background check to ascertain whether the applicant named on the application meets these requirements.

(12) One of the following: (a) proof of ownership of the entire premises where the Medical Marihuana operations will be conducted; or (b) written consent from the property owner for use of the premises in a manner requiring licensure under this chapter along with a copy of the lease for the premises;

(13) Proof of an insurance policy covering the facility or provisioning center and naming the city as an additional insured party, available for the payment of any damages arising out of an act or omission of the applicant or its stakeholders, agents, employees, or subcontractors, in the amount of (a) at least one million dollars for property damage; (b) at least one million dollars for injury to one person; and (c) at least two million dollars for injury to two or more persons resulting from the same occurrence. The insurance policy underwriter must have a minimum A.M. Best company insurance ranking of B+, consistent with state law;

(14) A description of the security plan for the facility or provisioning center, including but not limited to, any lighting, alarms, barriers, recording/monitoring devices, and/or security guard arrangements proposed for the premises. The City may establish minimum security measures;

(15) An affidavit that neither the applicant nor any stakeholder of the applicant is in default to the city;

(16) An affidavit that only primary caregivers will be involved in the transfer of marihuana to qualifying patients and only in the manner allowed by the Act;

(17) Any proposed text or graphical materials to be shown on the exterior of the proposed facility of provisioning center;

(18)Patient Education plan; (requirements to be established by council; carryover from prior Lansing ordinance.)

(19) Recordkeeping and inventory procedures that describe how the acquisition and provision of medical marihuana will be tracked. This shall include on-site cultivation and processing;

(20) A location area map of the facility or provisioning center that identifies the relative locations and the distances to the facility of the real property comprising a public or private elementary, vocational or secondary school; a child care organization required by the child care organizations act, PA 1 16 of 1973, to be licensed or registered by the Michigan Department of Human Services.

(21) A facility or provisioning center sanitation Plan; (requirements to be established by council)

(g) Upon receipt of a completed facility or provisioning center application meeting the requirements of this Chapter the city clerk will confirm that the number of existing licenses does not exceed the maximum number established by resolution pursuant to subsection ____ .

(h) No application shall be approved unless:

(1) The Fire Department has inspected the proposed location for compliance with all laws for which it is charged with enforcement;

(2) The Building Safety Office has inspected the proposed location for compliance with all laws for which it is charged with enforcement ;

(3) The applicant and each stakeholder of the applicant have passed a background check conducted by the Police Department;

(4) The Zoning Administrator has confirmed that the proposed location complies with the Zoning Code; and

(5) The City Treasurer has confirmed that the applicant and each stakeholder of the applicant are not in default to the City.

(i) If final approval is obtained, all use of the property shall be in accordance with the license application, including all information and specifications submitted by the applicant in the application.

(j) Licensees shall report any other change in the information required by this section to the City Clerk within ten days of the change.

(k) Any applicable application or license fees will be set by Council.

1301.05–MINIMUM OPERATIONAL STANDARDS FOR FACILITIES AND PROVISIONING CENTERS

(a) Nothing is this chapter, or any companion regulatory provisions adopted in any other provision of the Code, is intended to grant, nor shall it be construed as granting immunity from criminal prosecution for:

(1) Cultivation, sale, consumption, use, provision, manufacture or possession of marihuana in any form not in compliance with the Act or,

(2) Any criminal prosecution under federal laws including seizure of property under the Federal Controlled Substances Act. 21 U.S.C. Sec. 801 *et seq.*

(b) Whether a facility or provisioning center, there shall not be more than 12 Medical Marihuana plants being cultivated by a patient for themselves or in the case of a caregiver, 12 per patient, in strict accordance with the Act.

(c) Consumption of Medical Marihuana shall be prohibited on the premises of a facility or provisioning center, and a sign shall be posted on the premises indicating that consumption is prohibited on the premises.

(d) The facility or provisioning center shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras. The video recordings shall be maintained in a secure, off-site location for a period of not less than 14 days.

(e) Public or common areas of a facility or provisioning center must be separated from restricted or non-public areas by a permanent barrier. No Medical Marihuana is permitted to be stored, displayed, or transferred in an area accessible to the general public.

(f) All Medical Marihuana storage areas within a facility or provisioning center must be separated from any customer/patient areas by a permanent barrier. No Medical Marihuana is permitted to be stored in an area accessible by the general public or registered customers/patients.

(g) Any usable Medical Marihuana remaining on the premises of a facility or provisioning center while it is not in operation shall be secured in a safe permanently affixed to the premises.

(h) No facility or provisioning center shall have a drive-through window on the premises.

(i) No facility or provisioning center shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property on which the facility or provisioning center is operated.

(j) The license required by this chapter shall be prominently displayed on the premises of the facility or provisioning center.

(k) Disposal of Medical Marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it and otherwise in conformance with state law and this chapter.

(l)All Medical Marihuana delivered to a patient shall be packaged and labeled as provided in this chapter. The label shall include:

(1) A unique alphanumeric identifier for the person to whom it is being delivered;

(2) A unique alphanumeric identifier for the registered primary caregiver who is delivering the medical marihuana;;

(3)That the package contains Medical Marihuana;

(4)The date of delivery, weight, type of Medical Marihuana, dollar amount or other consideration being exchanged in the transaction;

(5)A certification that all Medical Marihuana in any form contained in the package was cultivated, manufactured and packaged in conformance with state law;

(6)The warning that:

This product is manufactured without any regulatory oversight for health, safety or efficacy. There may be health risks associated with the ingestion or use of this product. Do not drive or operate heavy machinery while using this product. Keep this product out of reach of children. This product may not be used in any way that does not comply with the Michigan Medical

Marihuana Act or by any person who does not possess a valid medical marihuana patient registration card.

(7)The name, address, email address, and telephone number of the facility or provisioning center that a patient can contact with any questions regarding the product.

(m) All registered patients must present both their Michigan registry identification card and Michigan State ID prior to entering restricted/limited areas or non-public areas of the facility or provisioning center.

(n) Each facility or provisioning center shall be open for inspection during the stated hours of operation and as such other times as anyone is present on the premises.

(o) Alcoholic beverages shall not be sold, consumed or distributed on the premises of facility or provisioning center.

(p) No facility or provisioning center shall allow loitering inside or outside its premises.

(q) Medical Marihuana facilities and provisioning center shall be closed for business, and no sale or other distribution of marihuana in any form shall occur upon the premises or be delivered from the premises, between the hours of ___ and ___.

(r) The use of the symbol or image of a marihuana leaf in any exterior signage at any caregiver operated facility or provisioning center is strictly prohibited. Furthermore, it shall be prohibited to display any signs that are inconsistent with local laws or regulations or State law.

1301.06 –MIMINUM OPERATIONS STANDARDS FOR MEDICAL MARIHUANA HOME OCCUPATION.

(a) All use of marihuana on the premises shall comply with the Act at all times. In addition, the following minimum standards for medical marihuana home occupations shall apply:

(1) The maximum area for home occupations shall be calculated as 25 percent of the useable residential floor area of a dwelling unit or 300 feet whichever is less;

(2) A qualified patient must be an occupant of the home;

(3) The use of the dwelling unit for medical marihuana cultivation shall be clearly incidental and subordinate to its use for residential purposes. The residence shall maintain kitchen, bathrooms, living rooms, dining rooms, hallways, and primary bedrooms for their intended use and not for cultivation of medical marihuana;

(4) All medical marihuana that is not being consumed at the time shall be contained within an enclosed, locked facility inside a primary or accessory building;

(5) All necessary building, electrical, plumbing and mechanical permits shall be obtained for portion of the building in which electrical wiring, lighting and/or watering devices that support the cultivation, growing or harvesting of marihuana are located. That portion of the building

where energy usage and heat exceeds typical residential use, such as grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Lansing fire department to insure compliance with the Michigan fire protection code;

(6) The premises shall be open for inspection upon probable cause and request by either building code officials, the fire department, or law enforcement officials to determine compliance with all applicable laws and rules;

(7) If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential levels between the hours of 11:00 p.m. and 7:00 a.m. shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that may create a distraction for adjacent residential properties or vehicles on adjacent right-of-ways;

(8) Exterior signage identifying medical marihuana home cultivation is prohibited;

(9) The cultivation, process, or use of medical marihuana which creates noise, dust, vibration, glare, fumes, noxious odors or electrical interference detectable to the normal senses from the exterior of the curtilage of the premises shall be prohibited; and

(10) Copies of the registry identification card for the qualifying patient must be maintained on premises during all times of operation.

1301.07 –LOCATION OF MEDICAL MARIHUANA FACILITIES AND PROVISIONING CENTERS.

(a) No Medical Marihuana facility or provisioning center shall be located within:

(1) 1,000 radial feet of real property comprising a public or private elementary, vocational, or secondary school; A child care organization required by the child care organization act, PA 116 of 1973, to be licensed or registered by the Michigan department of human services.

(b) Medical Marihuana facilities and provisioning center shall be limited to appropriate retail zoning districts as follows:

(1) The “F” and “F-1” Commercial, “E-2” Local Shopping, “G-2” Wholesale, “H” Light Industrial and “I” Heavy Industrial Districts, as long as there is no residential use on the parcel containing the facility or provisioning center.

1301.08 –LOCATIONS OF MEDICAL MARIHUANA HOME OCCUPATIONS.

(a) Medical Marihuana Home Occupations shall be limited to the following residential zoning districts:

(1) Zones “A”, “B”, “C”, “DM-1”, “DM-2”, “DM-3”, and “DM-4”

(b) Medical Marihuana Home Occupation is prohibited in any multi-family dwelling.

1301.09 –DENIAL AND REVOCATION

(a) A license is valid only for the location identified on the license and cannot be transferred to another location within the city without a new application. If a new application for a proposed license location meets the standards identified in this chapter, licenses may transfer a license issued under this chapter to a different location within the City as long as the transfer would conform with the other provisions of this ordinance.

(b) A license does not prohibit prosecution by the federal government of its laws or prosecution by state authorities for violations of the Act or other violations not protected by the Act.

(c) If an applicant or licensee fails to comply with this chapter or rules, if a licensee no longer meets the eligibility requirements for a license under this ordinance, or if an applicant or licensee fails to provide information requested by the City Clerk to assist in any investigation, inquiry, or administrative hearing, the Clerk may deny, suspend, or revoke a license. The Clerk may suspend, revoke, or restrict a license and require the removal of a licensee or an employee of a licensee for a violation of this chapter. The Clerk may impose civil fines, in the amount to be set by City Council Resolution, for each violation of this chapter, rules, or order of the City Clerk. In addition, a license may be suspended or revoked for any of the following reasons:

(1) Any conviction for or guilty plea to a felony involving controlled substances or assaultive crimes by a licensee or any stakeholder of the occurring: (a) prior to being issued a license; or (b) while licensed under this chapter;

(2) Commission of fraud or misrepresentation or the making of a false statement by the licensee or any stakeholder of the licensee while engaging in any activity for which this chapter requires a license;

(3) The licensee's operation is determined by the City to have become a public nuisance;

(d) A license issued under this chapter may be revoked after an administrative hearing at which it is determined that any grounds for revocation under Subsection (c) exist. Notice of the time and place of the Hearing and the grounds for revocation must be given to the Licensee at least five days prior to the date of the hearing, by first class mail to the address given on the license application or any address provided pursuant to Section 1300.03(g).

(e) The City Clerk may designate a Special Hearing Officer to conduct investigative and contested case hearings; issue subpoenas for the attendance of witnesses; issue subpoenas duces tecum for the production of books, ledgers, records, memoranda, electronically retrievable data, and other pertinent documents; and administer oaths and affirmations to witnesses as appropriate to the exercise and discharge the powers and duties of the clerk under this chapter.

(f) Suspension or revocation of a license is not an exclusive remedy and nothing contained herein is intended to limit the city's ability to prosecute code violations that may have been the cause of the suspension or revocation or any other code violations not protected by the Act.

(g) Each day that a licensee shall conduct an operation, whether it be facility, provisioning center or home cultivation related, without a license or allow, operate, or assist in said unlicensed operation shall constitute a separate offense.

(h) If a licensee has ceased business operations for 60 consecutive days, the licensee shall return the license to the City Clerk. If the licensee demonstrates good cause and all required fees are paid, the Clerk may place the license in escrow for up to 1 year. To remove a license from escrow, the licensee must submit the Clerk with a written request and any other information required by rule.

1301.10 PENALTIES AND DISCIPLINE

(a) The city of Lansing may require an Applicant or Licensee to produce documents, records, or any other material pertinent to the investigation of an application or alleged violation of this chapter. Failure to provide the required material may be grounds for application denial, license revocation, or discipline.

(b) Any person in violation of any provision of this chapter shall be subject to a civil fine. Increased civil fines may be imposed for repeated violations of any requirements or provisions of this chapter. As used in this section "repeat offense' means a second or any subsequent infraction of the same requirement or provision committed by a person within any 12-month period and for which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided in this chapter or any other ordinance for a Municipal Infraction, the increased schedule is as follows:

1. _____, plus costs the first infraction;

2. A fine of any offense which is a first repeat offense shall be not less than _____ dollars, plus costs.

3. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than _____ dollars plus costs.

(c) All fines imposed under this chapter shall be paid within 45 days after the effective date of the order imposing the fine or as otherwise specified in the order. If the licensee fails to pay any and all fines within 45 days, the clerk may initiate revocation/suspension proceedings.

1301.11 -NO VESTED RIGHTS

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this chapter or any amendment of this chapter.

1301.13 -SEVERABILITY

If any clause, sentence, section, paragraph, or part of this chapter, or the application thereof to any person, legal entity, or circumstance, shall be for any reason adjudged by a court of competent jurisdiction to be invalid, the application of such provision to other persons, legal entities or circumstances by such shall be confined in its operation to the part of the this chapter directly involved in the case or controversy in which such judgment shall have been rendered and to the person, legal entity or circumstances then and there involved. It is hereby declared to the legislative intent of this body that the chapter would have been adopted had such provision had not been included in this chapter.

Date: May 19, 2016

To: Honorable Lansing City Council

From: Jamaine Dickens, DMC Strategies

RE: Proposed Medical Marihuana Ordinance/Drive-Thru Service Windows

The Michigan Medical Marihuana Act (MMMA), passed as a ballot initiative in 2008, indicates acceptance by the overwhelming majority of Michigan voters. The MMMA passed by a 2-1 margin in every county in the state Michigan. In Lansing, nearly three out of every four residents voted in favor of the MMMA, however, for some elected officials the idea of caregivers dispensing medical marihuana in a commercial facility is still a very polarizing issue.

The City of Lansing passed and codified an ordinance regulating this commercial use in 2011, which authorized drive-thru windows. On May 12, 2016, the City of Lansing passed a moratorium on licensing such facilities, even though the City has never implemented its existing framework. And now, the City is drafting a new ordinance to regulate medical marihuana caregiver centers.

In the current draft, Section 1301.05 (h), drive-thru windows are prohibited; however, it is our belief that drive-thru windows not only satisfy the needs of medical marijuana patients who suffer from debilitating illnesses and chronic pain, but also satisfies the concerns of those who oppose medical marihuana caregiver facilities as a whole.

As such, we ask that you reconsider your current position on drive-thru service windows, allowing them in industrially zoned areas only, for the following reasons:

1. **Drive-thru service makes patient care the top priority.** What is often forgotten in the debate concerning drive-thru windows at caregiver facilities is that the receiving patients have very serious medical conditions. Many patients have mobility issues; therefore, allowing drive-thru service windows offers immediate ADA compliance, which is federal law. At the same time, drive-thru service provides patients who suffer from debilitating illness the necessity and convenience of barrier-free access.

   According to the MMMA, the following conditions have been identified for use of medical marihuana:

   > *"Debilitating medical condition" means 1 or more of the following:*
   >
   > *(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.*
   >
   > *(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis."*

2. **The MMMA recognizes medical marihuana as medicine.** Therefore, caregiver centers should be treated as a medical use with the same zoning and policy considerations as pharmacies, many of which dispense opiate or opioid medications such as Morphine, Codeine, Oxycodone using drive-thru windows. Opiates (naturally occurring) or opioids (synthetic) are the active ingredients in heroin, which is an ILLEGAL substance. Medical marihuana is a LEGAL medicine and should be treated as such, and caregiver facilities should be allowed to dispense medicine in the same manner as any pharmacy with a drive-thru.

3. **A drive-thru satisfies nuisance concerns.** Opponents of these facilities characterize them as a nuisance, with which we vehemently disagree. However, under general zoning principles, factors that create a nuisance can include loitering, excessive noise, parking issues, traffic and odors, which could never occur at a facility if patients don't have to exit their vehicle to obtain their medicine. In simple terms, those who oppose these facilities because of the potential nuisance should be in favor of drive-thru windows, if for no other reason than to eliminate the so-called nuisance. With a drive-thru window, the patient would quickly and efficiently purchase the needed medicine from the drive-thru and then leave the site.

4. **Drive-thru service follows the same laws walk-in service.** Instead of prohibiting drive-thru windows, the City of Lansing should impose operating conditions for drive-thru windows that explicitly state: (1) Before any transaction at a drive-thru window, a driver's license or state identification must be presented, along with a state-issued medical marihuana card; (2) All medicine dispensed from a drive-thru window is done so in a locked container for transport; (3) A "storing" lane or area shall be provided to allow patients and/or passengers to place the locked container in the trunk of the vehicle before exiting the property, unless it is an SUV, station wagon or pickup truck; (4) A sign directing patents to the "storing" area shall be posted; (5) Personnel may be on hand to assist immobile patients with placing the locked containers in their trunks as needed.

As your Honorable Body moves forward in deliberation over the new medical marihuana ordinance, we implore you not to forget about the sole purpose of the MMMA, which is to provide safe access to patients who critically need their medicine. Many of those patients need the convenience of drive-thru window service. Lastly, these patients are your residents, who are law-abiding, card-carrying, taxpaying citizens who have already suffered enough.

As such, we ask the drive-thru window services be allowed, in industrial and light industrial zoned areas, giving patients the convenient access they need in areas furthest removed from the general public.

I look forward to discussing these issues and others. If you have any questions, please do not hesitate to call me at 313-673-2667, or email me at jdickens@dmcstrategies.com.

cc: Honorable Virg Bernero
Lansing City Clerk
Mark Dotson, Deputy Corporation Counsel

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D. Lomakoski	(2521)
S. Fearnow	(2688)
R. Forbis	(2517)

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Platoon 1- Sgt. Nate Osborn 483-4682 nathan.osborn@lansingmi.gov

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F. Mobley	(2587)
C. Frazier	(2545)
M. Hood-Marble	(2606)
C. Ford	(2656)
R. Thomas	(2615)

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M. Johnson	(2578)
D. Dykens	(2689)

Platoon 3- Sgt. S. McNamara 483-6840 shawn.mcnamara@lansingmi.gov

D. Belill	(2593)
W. Vaughn	(2764)
R. Hon	(2657)
K. Brooks	(2759)
R. Bricker	(2768)
R. Lawrence	(2767)

Step 5 Officers

Dillon Reust	(2746)
T. Lewandowsky	(2741)
E. McDowell	(2742)
T. Brandman	(2745)
Dalton Reust	(2748)
E. Nielson	(2740)
B. Wilson	(2744)
L. Johnson	(2747)

Traffic Unit - Sgt. Leith Curtis 483-4667 leith.curtis@lansingmi.gov

D. Burke	E. Guerra
J. Riedel	D. Blount

Traffic Follow Up

T. Blount 483-4668

Subpoena Officer

T. Mironiuk (2682)

K-9 Unit

R. Bahl	(2595)
B. Rendon	(2577)
K. Szczesny	(2611)
B. Frazier	(2602)
J. Garcia	(2610)
J. Pung	(2632)

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A. Beattie	(2505)
M. Rochford	(2598)
P. Elton	(2506)

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K. Marshall	(2693)
P. Howard	(2687)
A. Waldrop	(2766)
J. Schmidt	(2700)
S. Bokovoy	(2634)
J. Johnson	(2652)

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M. Danko	(2690)
A. Booth	(2704)
K. Freeman	(2702)
S. Nolen	(2618)
B. Roberts	(2669)
N. Zuber	(2705)

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J. Lenneman	(2692)
A. Matthews	(2633)

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Sgt. M. Kreft 483-4613 matthew.kreft@lansingmi.gov

Community Services

K. Osborn 483-6812

School Officers

R. Smith (Sexton)	517-243-2273
D. Person (Everett)	517-242-6777
M. Priebe (Eastern)	517-643-5512

CPO's

L. Leiter	Baker/Donora Area	(2686)
J. LaCross	Moores River Neighborhood	(2599)
T. Arnold	Washington Ave. Corridor	(2637)
E. Boswell	Northtown Neighborhood	(2695)
S. Willson	Genesee Neighborhood	(2644)
M. Salmon	Downtown	517-256-9013
D. Hamilton	Kalamazoo Corridor	517-230-6002
K. Pratl	Jolly/Waverly	517-648-5633

Front Desk # 483-7665
Emergency 911 / Non-Emergency 483-4600
To leave a message for an officer, Dial 483-6868,
Then enter the 4-digit number next to his/her name

Submitted @ Mtg 6/10/16

Community Police Officers

Name	Location	Phone	Email
Sgt. Matthew Kreft		517-483-4613	matthew.kreft@lansingmi.gov
Ofc. Lance Leiter	Baker/Donora Neighborhood	x2686*	lance.leiter@lansingmi.gov
Ofc. Jon LaCross	Moores River Neighborhood	x2599*	jonathan.lacross@lansingmi.gov
Ofc. Trevor Arnold	Washington Ave. Corridor	x2637*	trevor.arnold@lansingmi.gov
Ofc. Eric Boswell	Northtown Neighborhood	x2695*	eric.boswell@lansingmi.gov
Ofc. Sarah Willson	Genesee Neighborhood	x2644*	sarah.willson@lansingmi.gov
Ofc. Matthew Salmon	Downtown Stadium Dist.	517-256-9013	matthew.salmon@lansingmi.gov
Ofc. Garrett Hamilton	Kalamazoo St. Corridor	517-230-6002	garrett.hamilton@lansingmi.gov
Ofc. Kristi Pratl	Jolly/Waverly Corridor	517-648-5633	kristi.pratl@lansingmi.gov

*To call: Dial 517-483-6868 then enter the 4-digit extension. If officer is away from the desk, please leave a voicemail.

Always call 9-1-1 during an emergency

submitted @ mtg 6/10/16

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RYAN MICHAEL BYLSMA,

Defendant-Appellant.

FOR PUBLICATION
May 17, 2016
9:00 a.m.

No. 317904
Kent Circuit Court
LC No. 10-011177-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID JAMES OVERHOLT, JR.,

Defendant-Appellant.

No. 321556
Kent Circuit Court
LC No. 13-005106-FH

Before: RIORDAN, P.J., and SAAD and MARKEY, JJ.

RIORDAN, P.J.

These cases, which involve the application of the Michigan Medical Marihuana[1] Act ("MMMA"), MCL 333.26421 *et seq.*, to a cooperative medical marijuana grow operation and a medical marijuana dispensary, return to this Court on remand from the Michigan Supreme Court for consideration as on leave granted.[2] They have been consolidated on appeal, as each case

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[1] Although the MMMA refers to "marihuana," this Court uses the more common spelling, *i.e.*, "marijuana," in its opinions. *People v Carruthers*, 301 Mich App 590, 594 n 1; 837 NW2d 16 (2013). Except when directly quoting the statute, we will use the more common spelling in this opinion.

[2] *People v Bylsma*, 498 Mich 913; 871 NW2d 157 (2015); *People v Overholt*, 498 Mich 914; 871 NW2d 158 (2015).

submitted @ mtg

presents the same issue: whether a defendant, who possessed, cultivated, manufactured, delivered, sold, or transferred marijuana to a patient or caregiver to whom the defendant was not connected through the registration process of the MMMA, is entitled to raise a defense under § 8 of the MMMA, MCL 333.26428. See *People v Bylsma*, 498 Mich 913; 871 NW2d 157 (2015); *People v Overholt*, 498 Mich 914; 871 NW2d 158 (2015). For the reasons set forth below, we conclude that a § 8 affirmative defense may be available to a defendant who sells, transfers, possesses, cultivates, manufactures, or delivers marijuana to and for patients and caregivers to whom he is not connected through the registration process of the MMMA. However, as a necessary prerequisite, such a defendant must fall within the definition of "patient" or "primary caregiver," as those terms are defined, used, and limited under the act. See MCL 333.26423, MCL 333.26426, MCL 333.26427(a), MCL 333.26428.

In Docket No. 317904, we affirm the trial court order denying defendant Ryan Michael Bylsma's motion to dismiss or, in the alternative, permit the assertion of an affirmative defense under § 8 of the MMMA at trial, and remand for further proceedings consistent with this opinion. In Docket No. 321556, we similarly affirm the trial court order denying defendant David James Overholt Jr.'s motion to dismiss and its later ruling that an affirmative defense under § 8 of the MMMA was inapplicable in that case.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. DOCKET NO. 317904

The charges in Docket No. 317904 arise from defendant Bylsma's operation of a "cooperative medical marijuana grow operation" in Grand Rapids, Michigan. The underlying facts of this action were set forth in *People v Bylsma*, 493 Mich 17, 23-24; 825 NW2d 543 (2012):

> Pursuant to § 6 of the MMMA, a qualifying patient and his primary caregiver, if any, can apply to the MDCH for a registry identification card. Defendant Ryan Bylsma did so and, at all relevant times for the purposes of this appeal, was registered with the MDCH as the primary caregiver for two registered qualifying medical marijuana patients. He leased commercial warehouse space in Grand Rapids and equipped that space both to grow marijuana for his two patients and to allow him to assist other qualifying patients and primary caregivers in growing marijuana. A single lock secured the warehouse space, which was divided into three separate booths. The booths were latched but not locked, and defendant moved plants between the booths depending on the growing conditions that each plant required. Defendant spent 5 to 7 days each week at the warehouse space, where he oversaw and cared for the plants' growth. Sometimes, defendant's brother would help defendant care for and cultivate the plants. Defendant had access to the warehouse space at all times, although defense counsel acknowledged that two others also had access to the space.
>
> In September 2011, a Grand Rapids city inspector forced entry into defendant's warehouse space after he noticed illegal electrical lines running along water lines. The inspector notified Grand Rapids police of the marijuana that was

> growing there. The police executed a search warrant and seized approximately 86 to 88 plants. Defendant claims ownership of 24 of the seized plants and asserts that the remaining plants belong to the other qualifying patients and registered caregivers whom he was assisting.
>
> Defendant was charged with manufacturing marijuana in violation of the Public Health Code, MCL 333.7401(1) and (2)(d), subject to an enhanced sentence under MCL 333.7413 for a subsequent controlled substances offense. [Footnotes omitted.]

In the trial court, defendant filed a motion to dismiss under § 4 of the MMMA, MCL 333.26424, reserving his right to later raise an affirmative defense under § 8. The trial court denied defendant's motion. *Id.* at 24. Most relevant to this appeal, the court concluded that defendant failed to establish that he was entitled to immunity under § 4, and because his entitlement to an affirmative defense under § 8 was dependent on whether he fulfilled the requirements of § 4, he also was not entitled to raise an affirmative defense under § 8. *Id.*

Subsequently, this Court granted defendant's application for leave to appeal[3] and affirmed the trial court's decision. This Court agreed that defendant could not avail himself of the § 4 immunity provision and, as a result, was not entitled to assert an affirmative defense under § 8, given that § 8 required compliance with the provisions of § 4. *Bylsma*, 493 Mich at 25.

Defendant appealed this Court's decision to the Michigan Supreme Court, which affirmed in part and reversed in part. *Id.* at 21-22. The Court agreed that defendant was not entitled to immunity under § 4. *Id.* at 21, 33-35. However, it reversed this Court's decision that defendant was necessarily precluded from raising an affirmative defense under § 8 because he failed to satisfy the elements of § 4. Rather, it concluded that § 4 and § 8 are mutually exclusive, and a defendant is not required to establish the elements of § 4 in order to avail himself of the § 8 affirmative defense. *Id.* at 22, 35-36. The Court then declined to address the merits of the § 8 affirmative defense, concluding that it would be "premature" to decide the issue because defendant neither raised that defense nor received an opportunity to present evidence on that defense in the trial court. *Id.* at 36-37. Accordingly, the Court remanded the case back to the trial court for further proceedings. *Id.* at 37.

On remand, defendant filed a second motion to dismiss the charges against him—or, in the alternative, allow him to raise an affirmative defense at trial—under § 8 of the MMMA. In pertinent part, defendant argued that he was entitled to the defense under § 8 because, under the broad terms of that section, he was a "primary caregiver" for 14 different "patients": himself, Brad Verduin, Jeremy Sturdavant, David Taylor, Alohilani May, Larry Huck, Daniel Bylsma, Dennis Rooy, Glen Woudenberg, James Wagner, Eric Bylsma, John Hooper, Daniel Keltin, and Matthew Roest. Defendant acknowledged that most of his "patients" had primary caregivers

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[3] *People v Bylsma*, unpublished order of the Court of Appeals, entered April 11, 2011 (Docket No. 302762).

other than himself, but he asserted that this fact was not relevant for purposes of § 8, contending that even though § 4 only allowed a qualifying patient to have one primary caregiver and only allowed a primary caregiver to have five qualifying patients,[4] there were no such limitations in § 8. In other words, defendant argued that even though he was not the "Section 4 caregiver" for most of these individuals, he was their "Section 8 caregiver," as each of them (1) had a documented need for medical marijuana, (2) had been issued a medical marijuana identification card, and (3) was receiving assistance from defendant to meet his or her medical marijuana needs. Additionally, defendant argued that it was "reasonably necessary" for him to possess all of the marijuana plants found in his warehouse to ensure the uninterrupted supply of marijuana to himself and each of his other patients. In response to defendant's motion, the trial court held a two-day evidentiary hearing. During his testimony, defendant acknowledged that on the day of the raid, he was registered as a "Section 4" primary caregiver for only two patients, Huck and May. However, because of his training and experience with cultivating marijuana, he believed that he could "help anybody that needed help, as long as they had doctor's recommendations" for the use of medical marijuana, including patients who had registered primary caregivers other than defendant and primary caregivers with patients other than defendant. Many of the individuals associated with defendant's cooperative grow operation also testified regarding their certification as qualified medical marijuana patients or designation as primary caregivers, as well as their relationship with defendant in connection with the cultivation of marijuana. Three licensed Michigan physicians also testified regarding medical certifications that they performed for patients involved in defendant's cooperative grow operation.

The trial court denied defendant's motion to dismiss and held that defendant was precluded from raising an affirmative defense under § 8 at trial. In pertinent part, the trial court concluded:

> 8. Under the MMMA, a "primary caregiver" is "a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs." MCL 333.26423(i). Defendant now argues that at the time of the charged offense, he was a primary caregiver for twelve patients. Defendant contends that because the Supreme Court, in [*People v Kolanek*, 491 Mich 382; 817 NW2d 528 (2012),] and this case, ruled that § 4 and § 8 "operate independently", there is no limitation on the number of primary caregivers a single patient may have and, accordingly, the fact that some patients "had designated Section 4 registered caregivers did not prevent them from also designating [defendant] as their Section 8 caregiver." . . . The court is not persuaded by this argument. The record from the January 2011 hearing makes clear that defendant was the primary caregiver for only two patients. Defendant admitted at that time that most of the plants in his warehouse space were for patients other than those with whom he was connected;

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[4] Defendant erroneously cited § 4 for this proposition. As discussed further below, § 6, not § 4, provides that a primary caregiver may assist no more than five qualifying patients. MCL 333.26426(d).

> 9. Defendant's position requires interpretation of the MMMA, which the people enacted by initiative petition in November 2008.
>
> * * *
>
> When giving the words of the MMMA their ordinary and plain meaning as they would have been understood by the electorate, a primary caregiver refers to the patient's first or main caregiver. This Court must presume that every word, phrase and clause in the act has meaning and avoid any interpretation that renders any part of the statute surplusage. To accept defendant's argument that a qualifying patient could have more than one primary caregiver impermissibly renders the word "primary" nugatory and the Act internally inconsistent . . . .

Additionally, concerning defendant's ability to raise a § 8 defense solely with regard to his conduct involving himself, Huck, and May, the trial court concluded that defendant had not presented sufficient evidence to support each element required for the defense under § 8(a).[5]

Subsequently, the trial court denied defendant's motion for reconsideration. Most notably, it reiterated that the record evidence demonstrated that defendant was the primary caregiver for only two patients and rejected defendant's claim that the MMMA allows a qualifying patient to have more than one primary caregiver. Rather, it emphasized that defendant was assisting other primary caregivers with the cultivation of marijuana for patients specifically linked in the registry to those other caregivers, concluding that the MMMA does not permit caregiver-to-caregiver assistance. The trial court also restated its earlier conclusions regarding defendant's failure to establish a question of fact as to each of the elements of a § 8 defense as it pertained to his marijuana-related conduct involving himself or his two qualifying patients.

Defendant filed a second application for leave to appeal in this Court, which was denied.[6] He then filed an application for leave to appeal in the Michigan Supreme Court, which the Court held in abeyance pending its decisions in *People v Hartwick* (Supreme Court Docket No. 148444) and *People v Tuttle* (Supreme Court Docket No. 148971). After the Court issued a consolidated opinion in *People v Hartwick*, 498 Mich 192; 870 NW2d 37 (2015), it remanded this case back to this Court for consideration as on leave granted. *People v Bylsma*, 846 NW2d 921 (2014).

B. DOCKET NO. 321556

The charges in Docket No. 321556 arise from defendant Overholt's ownership of a medical marijuana dispensary, the Mid-Michigan Compassion Club ("the Club"), in Grand

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[5] After defendant's second motion to dismiss was denied, the prosecution amended the felony information to add one count of maintaining a drug house, MCL 333.7405(d), and one count of possession of marijuana, MCL 333.7403(2)(d).

[6] *People v Bylsma*, unpublished order of the Court of Appeals, entered November 12, 2013 (Docket No. 317904).

Rapids, Michigan. Defendant Overholt is a registered medical marijuana caregiver for at least one patient.

In March 2013, Grand Rapids police officers executed a search warrant at the Club, discovering various containers, jars, and bags filled with marijuana; several jars of "hash oil"; plastic baggies containing "marijuana candies"; digital scales; and money. Defendant was charged with delivery or manufacture of less than 50 grams of a schedule 1 or 2 controlled substance (Delta 1-Tetrahydrocannabinol), MCL 333.7401(2)(a)(*iv*); delivery or manufacture of less than 5 kilograms or 20 plants of marijuana, MCL 333.7401(2)(d)(*iii*); and maintaining a drug house, MCL 333.7405(d).

The preliminary examination testimony revealed that the Club operated on a membership basis, meaning that any person with a medical marijuana patient or caregiver card could become a member and purchase marijuana through the Club as long as he or she presented the proper documentation and paid the $20 annual fee. The marijuana that defendant sold to Club members was grown by himself or his "network of growers."[7] Originally, defendant sold marijuana to both patients and caregivers through the business. However, following the Michigan Supreme Court's decision in *State v McQueen*, 493 Mich 135; 828 NW2d 644 (2013), defendant, in an effort to remain in compliance with the MMMA, began to allow only caregivers to become members. However, based on the investigating detective's understanding of defendant's operations, defendant continued to sell marijuana directly to some patients even after the *McQueen* decision.

Before trial, defendant moved to dismiss his charges under § 8 of the MMMA, MCL 333.26428, arguing that (1) he was in compliance with the MMMA because any "person"—not just a "patient" or "caregiver"—could claim a defense under § 8(b); (2) the statute does not require all marijuana used for medical purposes to be grown by a patient or caregiver and, as a result, contemplates caregiver-to-caregiver transactions; (3) he only sold marijuana to members of the Club that provided proof that they were "authorized to be in possession of medical marijuana," *i.e.*, caregivers or patients who did not have caregivers; (4) he only possessed an amount of marijuana that was reasonably necessary to ensure the uninterrupted availability of marijuana for his Club members; and (5) he only provided marijuana to individuals who were using it for medical purposes. In response, the prosecution argued, *inter alia*, that defendant could not assert an affirmative defense under § 8 because it only applied to "a patient and a patient's primary caregiver," and the evidence showed that he supplied marijuana to people who were not his patients.

Following a hearing, during which no evidence was presented, the trial court adopted the prosecution's reasoning and denied defendant's motion to dismiss. It emphasized its duty to enforce the law as written and concluded that defendant's position was an improper extension of

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[7] Later, defendant Overholt's charges were amended. The charge of delivery or manufacture of less than fifty grams of a schedule 1 or 2 controlled substance (Delta 1-Tetrahydrocannabinol), MCL 333.7401(2)(a)(*iv*), was dismissed. One count of delivery or manufacture of a schedule 1, 2, or 3 controlled substance other than marijuana, MCL 333.7401(2)(b)(*ii*), was added.

the MMMA. However, at that time, the trial court did not decide whether defendant would be permitted to raise an affirmative defense under § 8 at trial.[8]

On the date set for trial, the court addressed whether defendant was entitled to raise a § 8 defense at trial even though he was not entitled to dismissal under that section. It concluded that defendant was not entitled to do so, reiterating its obligation to apply the MMMA as written and noting the absence of any provision in the MMMA allowing caregiver-to-caregiver sales of marijuana. Likewise, it stated that it found no provision of § 8 applicable in this case. Thus, the trial court concluded that a § 8 defense was "irrelevant" and that defendant could not present it, adding that it would not reconsider this issue unless the proofs demonstrated that defendant acted in compliance with the MMMA.

Immediately thereafter, defendant accepted a settlement offer presented by the prosecution, under which he pleaded no contest to one count of delivery or manufacture of marijuana in exchange for the dismissal of the remaining counts and a recommendation of no jail time if he closed his business. The plea was conditional upon appellate review of the MMMA. The trial court accepted the plea and sentenced defendant to two years' probation.

Defendant filed a delayed application for leave to appeal in this Court, which was denied.[9] He then applied for leave to appeal in the Supreme Court. As in Docket No. 317904, the Supreme Court held defendant's application in abeyance pending its decisions in *People v Hartwick* (Supreme Court Docket No. 148444) and *People v Tuttle* (Supreme Court Docket No. 148971). *People v Overholt*, 858 NW2d 54 (2015). Following the issuance of its consolidated opinion in *Hartwick*, 498 Mich 192, the Court reconsidered defendant's application for leave to appeal and, in lieu of granting leave, remanded the case back to this Court for consideration as on leave granted.

II. STANDARD OF REVIEW

"We review for an abuse of discretion a circuit court's ruling on a motion to dismiss[,] but review de novo the circuit court's rulings on underlying questions regarding the interpretation of the MMMA[.]" *Bylsma*, 493 Mich at 26 (footnotes omitted). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Duncan*, 494 Mich 713, 722-723; 835 NW2d 399 (2013).

III. RAISING A DEFENSE UNDER § 8 OF THE MMMA

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[8] See *People v Kolanek*, 491 Mich 382, 412; 817 NW2d 528 (2012) (stating that a trial court has three options when deciding a motion to dismiss under § 8: (1) grant the motion to dismiss, (2) deny the motion to dismiss but allow the defendant to raise the defense at trial, or (3) deny the motion to dismiss and preclude the defendant from raising the defense at trial).

[9] *People v Overholt*, unpublished order of the Court of Appeals, entered June 4, 2014 (Docket No. 321556).

"The possession, manufacture, and delivery of marijuana are punishable criminal offenses under Michigan law." *Hartwick*, 498 Mich at 209. Pursuant to the MMMA, however, " '[t]he medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of th[e] act.' " *Id.* (alterations in original), quoting MCL 333.26427(a).[10] Individuals in compliance with the MMMA may claim immunity from arrest and prosecution under § 4, MCL 333.26424, or raise an affirmative defense to prosecution under § 8, MCL 333.26428. See *Hartwick*, 498 Mich at 209. In particular, § 4 "grants broad immunity from criminal prosecution and civil penalties" to registered "qualifying patient[s]" and "primary caregiver[s]" who can satisfy the elements of that section. *Id.* at 210 (alterations in original). On the other hand, § 8 "provides any patient or primary caregiver—regardless of registration with the state—with the ability to assert an affirmative defense to a marijuana-related offense" if that person can satisfy the elements of that section. *Id.* at 226. Notably, "to establish the elements of the affirmative defense in § 8, a defendant need not establish the elements of § 4." *People v Kolanek*, 491 Mich 382, 403; 817 NW2d 528 (2012).

Here, our task is to determine whether a defendant who possesses, cultivates, or manufactures marijuana for a patient or caregiver to whom they are not connected through the MMMA registration process, or who otherwise provides marijuana to such a patient or caregiver, may assert an affirmative defense under § 8. This inquiry requires statutory interpretation of the MMMA.

As an initial matter, we recognize that due regard must be given to the fact that the MMMA is a voter-initiated statute:

> The MMMA was passed into law by initiative. We must therefore determine the intent of the electorate in approving the MMMA, rather than the intent of the Legislature. Our interpretation is ultimately drawn from the plain language of the statute, which provides the most reliable evidence of the electors' intent. But as with other initiatives, we place special emphasis on the duty of judicial restraint. Particularly, we make no judgment as to the wisdom of the medical use of marijuana in Michigan. This state's electors have made that determination for us. To that end, we do not attempt to limit or extend the statute's words. We merely bring them meaning derived from the plain language of the statute. [*Hartwick*, 498 Mich at 209-210 (quotation marks and citations omitted); see also *Bylsma*, 493 Mich at 26.]

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[10] Contrary to medical marijuana statutes in other jurisdictions, such as California and Colorado, the MMMA does not expressly authorize cooperative medical marijuana enterprises. *Bylsma*, 493 Mich 17, 27, 27 n 26; 825 NW2d 543 (2012). As previously noted by Judge O'CONNELL, Diane Byrum, a spokesperson for the Marijuana Policy Project—the group that drafted the MMMA—once stated "that '[t]he Michigan proposal wouldn't permit the type of cooperative growing that allows pot shops to exist in California.' " *People v Redden*, 290 Mich App 65, 110 n 17; 799 NW2d 184 (2010) (O'CONNELL, J., concurring) (citation omitted; alteration in original).

Stated differently, "[i]f the statutory language is unambiguous, . . . [n]o further judicial construction is required or permitted because we must conclude that the electors intended the meaning clearly expressed." *Bylsma*, 493 Mich at 26 (quotation marks and citations omitted; alterations in original). However, "[o]ur consideration of the availability of the affirmative defense in § 8 . . . is guided by the traditional principles of statutory construction." *Kolanek*, 491 Mich at 397. Accordingly,

> [i]n determining the [drafters'] intent, we must first look to the actual language of the statute. As far as possible, effect should be given to every phrase, clause, and word in the statute. Moreover, the statutory language must be read and understood in its grammatical context. When considering the correct interpretation, the statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. In defining particular words within a statute, we must consider both the plain meaning of the critical word or phrase and its placement and purpose in the statutory scheme. [*People v Jackson*, 487 Mich 783, 790-791; 790 NW2d 340 (2010) (footnotes omitted).]

When defendant Bylsma and defendant Overholt committed the offenses at issue in these cases, § 8 of the MMMA provided, in relevant part:

> (a) Except as provided in section 7, a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid where the evidence shows that:
>
> (1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;
>
> (2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and
>
> (3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

> (b) A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a). [MCL 333.26428(a), (b) (footnote omitted).[11]]

Accordingly, under MCL 333.26428(a), "a *patient* and a *patient's primary caregiver*, if any," may assert the medical use of marijuana as an affirmative defense in a marijuana-related prosecution. (Emphasis added.) We agree with defendants that an individual who qualifies as a "patient" or a "primary caregiver" may assert a § 8 defense regardless of his registration status and the registration status of the patient or primary caregiver, if any, with which he is affiliated. See *Hartwick*, 498 Mich at 213, 228; *Kolanek*, 491 Mich at 402. As the Michigan Supreme Court noted in *Hartwick*, 498 Mich at 236, "Those patients and primary caregivers who are not registered may still be entitled to § 8 protections if they can show that their use of marijuana was for a medical purpose—to treat or alleviate a serious or debilitating medical condition or its symptoms." Accordingly, we hold that a defendant who possessed, cultivated, manufactured, sold, transferred, or delivered marijuana to someone with whom he was not formally connected through the MMMA registration process may be entitled to raise an affirmative defense under § 8. However, we also hold that in order for such a defendant to be entitled to raise a defense under § 8, he must qualify as a "patient" or "primary caregiver" *as those terms are defined and limited under the MMMA*. See *Hartwick*, 498 Mich at 209 ("Under the MMMA . . . '[t]he medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of th[e] act.' The MMMA grants to persons in compliance with its provisions either immunity from, or an affirmative defense to, those marijuana-related violations of state law.") (footnote omitted; alterations in original), quoting MCL 333.26427(a).

Given the context of these consolidated appeals, it is necessary for us to clarify who constitutes a "patient" and a "primary caregiver" under the MMMA. "[I]n interpreting a statute, this Court must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme." *People v Beardsley*, 263 Mich App 408, 412; 688 NW2d 304 (2004). At time of the offenses at issue, "patient" was not defined in the MMMA; only "qualifying patient" was defined as "a person who has been diagnosed by a physician as having a debilitating medical condition." MCL 333.26423(h).[12] Nevertheless, the language of § 8 indicates that "patient" is used in that section to denote a person who has been diagnosed by a physician as having a "serious or debilitating medical condition," MCL 333.26428(a)(1)-(3), which is consistent with the meaning of "qualifying patient" under the former version of MCL 333.26423(h). In addition, the statute originally defined "primary caregiver" as "a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs."

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[11] MCL 333.26428 was subsequently amended by 2012 PA 512, effective April 1, 2013. Subsections (a) and (b) are substantively identical.

[12] The current version of the statute, as amended by 2012 PA 512, defines *both* "qualifying patient" and "patient" as "a person who has been diagnosed by a physician as having a debilitating medical condition." MCL 333.26423(i).

MCL 333.26423(g).[13] Notably, the definition of "primary caregiver" was framed in the singular, indicating that a patient's primary caregiver constituted one person.[14] Consistent with the syntax of this definition, § 6 of the act provides that "each qualifying patient can have no more than 1 primary caregiver[.]" MCL 333.26426(d). Section 6(d) also states that "a primary caregiver may assist no more than 5 qualifying patients with their medical use of marihuana." *Id.* Again,

> [w]hen considering the correct interpretation, the statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. In defining particular words within a statute, we must consider both the plain meaning of the critical word or phrase and its placement and purpose in the statutory scheme. [*Jackson*, 487 Mich at 790-791 (footnotes omitted).]

As such, we hold that to be in compliance with the MMMA—and, therefore, to be eligible to raise a defense under § 8 in a prosecution for marijuana-related conduct, see *Hartwick*, 498 Mich at 209—an individual must either be a "patient" himself or the "primary caregiver" of no more than five qualifying patients, as those terms are defined and understood under the MMMA.

We also conclude that the plain language of § 8 clearly indicates that the affirmative defense available under that section is intended to apply only to a prosecution arising out of activities directly related to a defendant's status as a patient or, if applicable, a defendant's status as a patient's primary caregiver. As stated *supra*, § 8(a) provides that "a patient *and* a patient's primary caregiver, if any, may assert *the* medical purpose for using marihuana as a defense to any prosecution involving marihuana[.]" (Emphasis added.) We believe that the use of the word "and" in this context is conjunctive, joining "patient" and "a patient's primary caregiver" as two limited, and connected, categories of individuals who may raise a § 8 defense. See *Black's Law Dictionary* (10th ed) (defining "conjunctive/disjunctive canon" as "[t]he doctrine that in a legal instrument, *and* joins a conjunctive list to combine items, while *or* joins a disjunctive list to create alternatives."). "The" is a definite article "with a specific or particularizing effect." See

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[13] The definition, which was amended by 2012 PA 512, now provides:

> "Primary caregiver" or "caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a. [MCL 333.26423(h).]

[14] While we recognize that "[i]f a statute specifically defines a term, the statutory definition is controlling," *People v Lewis*, 302 Mich App 338, 342; 839 NW2d 37 (2013), we find it significant to note that the singular framing of this definition is consistent with the common meaning of "primary." See *Merriam-Webster's College Dictionary* (11th ed) (defining "primary" as "first in order of time or development" or "something that stands first in rank, importance, or value").

Robinson v City of Lansing, 486 Mich 1, 14; 782 NW2d 171 (2010) (quotation marks and citation omitted). Thus, from this language, it is clear that only a patient himself and that patient's primary caregiver may assert a specific patient's "medical purpose for using marihuana" as an affirmative defense. This understanding is confirmed by the fact that the subsequent elements of § 8(a) consistently refer to "*the* patient" and "*the* patient's primary caregiver." (Emphasis added.) Likewise, the Michigan Supreme Court implicitly recognized that a § 8 defense is available only for conduct occurring in the context of an established patient-caregiver relationship when it stated, "A primary caregiver has the burden of establishing the elements of § 8(a)(1) for each patient to whom the primary caregiver is alleged to have unlawfully provided marijuana." *Hartwick*, 498 Mich at 232; see also § 8(a)(3) ("***The** patient and **the** patient's primary caregiver, if any, **were engaged*** in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate *the patient's* serious or debilitating medical condition or symptoms of *the patient's* serious or debilitating medical condition.") (emphasis added). Therefore, we conclude that the language employed in § 8 presupposes a relationship between the primary caregiver and the patient, so that the marijuana in the possession of the primary caregiver is cultivated or held by that caregiver, or transferred by the caregiver to the patient, in furtherance of the medical use of the marijuana by that particular caregiver's patient.

Accordingly, we find no basis for concluding that a defendant may assert a § 8 defense in a prosecution for conduct through which he possessed, cultivated, manufactured, delivered, sold, or transferred marijuana to an individual who serves as a primary caregiver for other patients or to a patient whom he did not serve as a *primary* caregiver. Stated differently, a defendant may not raise a § 8 defense in a prosecution for patient-to-patient transactions involving marijuana, caregiver-to-caregiver transactions involving marijuana, or other marijuana transactions that do not involve a patient whom the defendant serves as a "*primary* caregiver," and transactions involving marijuana that do not involve the defendant's own "*primary* caregiver," as those terms are defined and expressly limited under the act. Only conduct directly arising from the traditional patient-primary caregiver relationship is subject to an affirmative defense under § 8.

In so holding, we reject defendant Overholt's claim that a § 8 defense is available not only to a "patient" or "primary caregiver," but also to *any* "person" under § 8(b). Contrary to his characterization of the statute, § 8(b) expressly incorporates § 8(a): "A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person *shows the elements listed in subsection (a).*" MCL 333.26428(b) (emphasis added). Section 8(a), in turn, specifically provides that "a patient and a patient's primary caregiver, if any," may assert the defense, and the elements under § 8(a) repeatedly refer to "the patient" and "the patient's primary caregiver." Thus, when read in context, it is clear that § 8(b)'s reference to a "person" is, in fact, a reference to a "patient" or a "primary caregiver" who is able to satisfy the elements under § 8(a).

We also reject defendants' claim that caregiver-to-caregiver transactions are permitted under the MMMA. Contrary to defendant Bylsma's claims on appeal, assisting another patient's caregiver is not equivalent to assisting that patient directly for purposes of § 8. In contending that caregiver-to-caregiver transactions are permitted, both defendants rely on § 6(b)(3), which states that in order for a minor to be eligible to be a "qualifying patient" and receive a registry

identification card, the minor's parent must agree in writing to serve as the minor's primary caregiver and control the acquisition of marijuana for the child. MCL 333.26426(b)(3). From this language, they argue that § 6(b)(3)(C) implicitly recognizes that caregiver-to-caregiver transactions are allowable because the section implies that a parent can be a "primary caregiver" without having to personally cultivate marijuana so long as the parent controls how the child "acquires" marijuana from other sources (*i.e.*, other caregivers).

We first reject the application of this subjection in this case because it is undisputed that defendants' charges did not arise from transactions involving the parents of minor patients. Further, the plain language of § 6(b), both when read in isolation and in the context of the act, does not permit a parent, as the primary caregiver of a qualifying patient who is a minor child, to obtain marijuana from other caregivers. See *Hartwick*, 498 Mich at 209-210. Instead, the provision simply requires the parent to control the child's "acquisition," "dosage," and "frequency of the medical use of" marijuana. "Acquisition" is not defined in the MMMA, but it is defined by *Merriam-Webster's Collegiate Dictionary* (11th ed) as "the act of acquiring."[15] "Acquire" is defined as "to come into possession or control of *often by unspecified means*." *Id.* (emphasis added). Accordingly, § 6 (b)(3)(C) only requires that a parent *control* the way in which a child comes into possession or control of marijuana, meaning, in effect, that a child may not serve as his own caregiver and acquire marijuana himself. Further, consistent with the definition of "acquire," the means of acquisition are unspecified here, and we find no basis for concluding that this provision provides general authority for caregiver-to-caregiver transactions under the MMMA.

Therefore, in sum, a defendant who is not formally affiliated with a patient or primary caregiver through the registration process under the MMMA may raise a defense under § 8, but he must first demonstrate that he qualifies as a "patient" or "primary caregiver" as those terms are defined, and limited, under the MMMA and used in § 8. The plain language of the MMMA indicates that a patient can only have one "primary caregiver," and an individual may only serve as a "primary caregiver" for no more than five patients. MCL 333.26423(g) (defining "primary caregiver" prior to the act's amendment); MCL 333.26426(d). Thus, even though the plain language of § 8 does not specifically require a "primary caregiver" to be connected to a "patient" through the registration process under the MMMA, see *Hartwick*, 498 Mich at 209-210, the defense available under § 8 is limited by other provisions in the act, which restrict the number of primary caregivers that a patient can have and restrict the number of patients that a primary caregiver can serve. Moreover, the affirmative defense available under § 8 is necessarily restricted by the fact that no provision under the MMMA permits an individual to provide marijuana to one or more patients of another caregiver—or cultivate, manufacture, or otherwise possess marijuana on behalf of one or more patients of another caregiver—and therefore qualify as a "primary caregiver" for purposes of § 8.

III. APPLICATION

[15] When a term is not defined in a statute, the dictionary definition of the term may be consulted. *Lewis*, 302 Mich App at 342.

For the reasons discussed below, no reasonable juror could have concluded that defendant Bylsma and defendant Overholt were entitled to an affirmative defense under § 8, as the undisputed facts of each case demonstrate that neither of them served as a "primary caregiver" or "patient," as those terms are defined and limited under the MMMA and used in § 8, when they operated the cooperative growing operation and medical marijuana dispensary that resulted in the charges brought against them in these consolidated, although factually distinct, cases. Accordingly, the trial courts properly denied their motions to dismiss and concluded that they were precluded from presenting evidence of an affirmative defense under § 8 at trial. See *Kolanek*, 491 Mich at 413 ("[If] no reasonable jury could have concluded that [a defendant] satisfied the elements of the § 8 affirmative defense . . . . as a matter of law, he is precluded from presenting evidence of this defense at trial.").

A. DOCKET NO. 317904

In arguing that he is entitled to raise an affirmative defense under § 8, Defendant Bylsma fails to recognize the effect of the statutory definitions of "patient" and "primary caregiver" under the MMMA. He contends that he does not have to be connected to his numerous patients through the MDCH registry to be considered their "primary caregiver" solely based on the fact that "a § 8 defense may be pursued by any defendant, regardless of registration status." Accordingly, he argues that he is entitled to assert a defense under § 8 as long as he demonstrates that each of his "patients" fulfills all of the elements under § 8(a). However, a prima facie showing of each of the elements under § 8(a) is inconsequential unless he first demonstrates that he qualifies as a "primary caregiver" with regard to each patient-caregiver relationship for purposes of § 8. See *Hartwick*, 498 Mich at 232 ("A primary caregiver has the burden of establishing the elements of § 8(a)(1) *for each patient* to whom the primary caregiver is alleged to have unlawfully provided marijuana.") (emphasis added).

As discussed above, § 8 specifically allows "a patient's primary caregiver" or "a patient" to assert the affirmative defense of the medical use of marijuana as long as the elements of § 8(a) are established. MCL 333.26428(a), (b) (emphasis added). At the time of defendant's arrest, the term "primary caregiver" was defined as "a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs." MCL 333.26423(g). Reading this definition in isolation, defendant could arguably constitute a "primary caregiver" for all of the patients that he was assisting with the manufacture or cultivation of marijuana. Importantly, though, many of his "patients"—including Wagner, Eric Bylsma, Woudenberg, Hooper, Keltin, and Roest—already had designated themselves as their own primary caregivers or had designated under the MDCH registry primary caregivers other than defendant. Thus, as a practical matter, defendant could not be the "primary caregiver" of these patients, and there is nothing in the MMMA to suggest that a registered patient may have more than one primary caregiver. Rather, as discussed *supra*, § 6 of the MMMA expresses a clear directive that a qualifying patient cannot have more than one primary caregiver. MCL 333.26426(d). As such, defendant is not entitled, under the plain language of § 8(a), to assert an affirmative defense as it relates to registered patients who had primary caregivers other than defendant through the MDCH registry.

Likewise, because he was cultivating marijuana for other primary caregivers who were not themselves patients and, therefore, had no need for medical marijuana, including Dixon

(Keltin's primary caregiver) and VanderZee (Hooper's primary caregiver), defendant is not entitled to raise a § 8 affirmative defense in connection with that conduct. With regard to those individuals, defendant was not a "caregiver" at all, let alone a "primary caregiver," and, as explained previously, caregiver-to-caregiver transactions as not protected by § 8. Further, even if defendant Bylsma could constitute a "primary caregiver" for purposes of § 8 for the two patients who were serving as their own primary caregivers, the evidence revealed that defendant directly assisted significantly more than 5 "patients," which, again, is not permitted under § 6(d). MCL 333.26426(d).

In sum, defendant is not entitled to raise a § 8 defense because he does not constitute a "primary caregiver," as that term is defined and limited under the act, for each of the individuals to whom, or on behalf of whom, he possessed, cultivated, manufactured, or delivered marijuana. See *Hartwick*, 498 Mich at 232. There is nothing in the language of § 8 that allows a patient to have more than one primary caregiver or that allows a third party to possess marijuana plants on behalf of a registered primary caregiver who intends to supply the marijuana to patients connected to that caregiver. Thus, the trial court did not abuse its discretion in denying defendant's motion to dismiss the charges and precluding him from raising a § 8 defense at trial. See *Bylsma*, 493 Mich at 26.

B. DOCKET NO. 321556

As defendant Overholt expressly concedes on appeal, the evidence produced at the preliminary examination demonstrated that he, as a registered caregiver, sold marijuana to a multitude of caregivers as well as patients who did not have a primary caregiver and, therefore, served as their own caregivers.[16] As such, it is apparent that defendant sold marijuana indiscriminately to any caregiver (or patient) who came into his business with a medical marijuana card. Defendant did not fulfill the definition of "primary caregiver," as that term is defined and limited by the act and used in § 8, with regard to all of those individuals, as an individual is not permitted to have more than one caregiver, and a "primary caregiver" may only serve up to five patients. See *Hartwick*, 498 Mich at 232 (stating that a primary caregiver must establish the elements of § 8(a) with regard to each patient served in order to claim the defense). Further, as explained *supra*, we find no basis for concluding that caregiver-to-caregiver transactions are protected under § 8.

Thus, the trial court did not abuse its discretion in denying defendant's motion to dismiss and preventing him from raising the defense at trial. See *Bylsma*, 493 Mich at 26.

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[16] "[A]n evidentiary hearing must be held before trial" if a defendant "assert[s] a § 8 defense by filing a motion to dismiss the criminal charges." *People v Carruthers*, 301 Mich App 590, 598; 837 NW2d 16 (2013); see also *id.* at 612. However, we conclude that dismissal was proper in this case because the undisputed facts demonstrated that defendant Overholt was not entitled to a § 8 defense as matter of law due to the fact that he did not qualify as a "patient" or "primary caregiver" for purposes of § 8, regardless of the fact that the trial court did not hold an evidentiary hearing before it entered its ruling.

IV. CONCLUSION

In Docket Nos. 317904 and 321556, there was no genuine issue of material fact that neither defendant was entitled to raise an affirmative defense under § 8. Thus, the trial courts properly denied defendants' motions to dismiss or, in the alternative, raise an affirmative defense under § 8 at trial. See *Kolanek*, 491 Mich at 412 ("[I]f there are no material questions of fact and the defendant has not shown the elements listed in subsection (a), the defendant is not entitled to dismissal of the charges and the defendant cannot assert § 8(a) as a defense at trial.").

Accordingly, in Docket No. 317904, we affirm the trial court's order denying defendant Bylsma's motion to dismiss or, in the alternative, permit the assertion of an affirmative defense under § 8 of the MMMA at trial, and remand for further proceedings consistent with this opinion. In Docket No. 321556, we affirm the trial court's order denying defendant Overholt's motion to dismiss and its later ruling that an affirmative defense under § 8 of the MMMA was inapplicable in his case. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Henry William Saad
/s/ Jane E. Markey

Cannabis Patients United

Advocacy for Medical Cannabis Patients

June 1, 2016

Lansing Ordinance

This paper discusses the proposed Lansing ordinance which seeks to regulate medical marihuana within the city. It expresses the views of Cannabis Patients United (CPU), a federally recognized 501(c)(4) non-profit, that provides educational services and advocacy for medical marihuana patients and caregivers under the Michigan Medical Marihuana Act (MMMA).

As CPU understands it, the impetus behind the proposed ordinance was the proliferation of dispensaries, also called provisioning centers, within the City of Lansing.

CPU has no official position on such facilities; however, given the precedents under the MMMA, all existing dispensaries in Lansing are probably being operated illegally. There is no need for any new ordinance to rid the City of dispensaries if that's what the City wants to do. The City need only enforce existing laws relating to distribution and sale of marihuana. For instance, to the best of our knowledge, there are no dispensaries operating in Oakland County because the Oakland County Sheriff's Department has aggressively moved against them. No ordinance was required to do this.

Again, CPU has no official position on dispensaries, but it does fully support the caregiver/patient system created by the MMMA and vigorously opposes attempts by localities to impose additional burdens on patients and caregivers not set out in the MMMA. Unfortunately, the proposed ordinance goes well beyond addressing dispensaries and is seriously inconsistent with the rights of patients and caregivers.

Although proponents of the proposed ordinance contend that it does not seek to ban dispensaries and, indeed, will allow licensing of the same, this is entirely disingenuous. It is highly unlikely that any dispensary/provisioning center (even if it could meet all of the proposed ordinance's licensing requirements) could be economically viable under the operational standards set forth in the ordinance.

CPU is not advocating for dispensaries, but it does object to proponents asserting that the ordinance would create safe, well-regulated dispensaries instead of forthrightly admitting that the ordinance is really, in large part, about banning dispensaries.

Submitted @ mtg
6/10/16

I. The Ordinance Is Inconsistent With Patient/Caregiver Rights Under the MMMA.

Ordinances that conflict with state law may be invalid and preempted for that reason or because the statute evinces an intent to provide the entire regulatory scheme over a subject -- known as field preemption.

With respect to the MMMA -- even assuming it does not result in field preemption -- the Act, itself, specifically provides in MCL 333.26427(a) declaring that: "*The medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act.*"

"*Medical use*" is defined in MCL 333.26423(f), and broadly encompasses possession, cultivation, transportation, delivery and the like.

Moreover, MCL 333.26427(e) specifically states that: "*All other acts and parts of acts that are inconsistent with this act do not apply to the medical use of marihuana as provided by this act*".

While the proposed ordinance is not an act, the City's ability to legislate with respect to marihuana is a power derived from the Home Rule Cities Act. To the extent the City purports to adopt an ordinance that imposes burdensome requirements on the use of medical marihuana as permitted by the MMMA, it necessarily relies on the Home Rules City Act, and to the extent the Home Rules City Act otherwise would allow such an ordinance, it is inconsistent with the MMMA and, thus, is inapplicable to medical marihuana use as provided in the MMMA.

This paper will now address certain aspects of the specific burdens the proposed ordinance imposes on patients/caregivers that renders it inconsistent with the MMMA:

A. The ordinance seeks to require registered patients under the MMMA to have to obtain a City license to cultivate marihuana for personal use. This is accomplished through the proposed ordinance's definition of "Home Occupation". Under section 1301.03(c)(4) of the proposed ordinance, a license is required for the "*personal residence where the residence is being utilized as a home occupation*".

The MMMA requires, at most, only the patient's registration with the State as a "*qualifying patient*" to authorize that patient's home cultivation of marihuana for medicinal use.

Section 1301.04 sets forth what is required in a license application for a qualifying patient who home grows, for a "*facility*" and for a "*provisioning center*". The application requirements impose substantive restrictions on both patients and caregivers registered under the MMMA which are inconsistent with that act. Requiring a home-growing patient to obtain a license from the city when one is not required by the MMMA clearly adds requirement to the "*medical use*" of marihuana not found in the MMMA.

In addition to raising privacy issues by compelling patients to disclose themselves to the City -- the MMMA makes the state registry confidential and makes it a criminal act to disclose registry information with a few exceptions, see MCL 333.26426(h) -- a home-growing patient virtually loses privacy rights under the proposed ordinance.

For instance, obtaining a license under the ordinance would require the patient to permit inspections by the Fire Department and the Building Safety Office and to authorize the Police Department to conduct a background check of the patient. The name of the patient would be shared with the City

Treasurer because if the patient has any overdue financial obligation to the City, he/she cannot obtain a license which would permit a home-grow for personal, medical use! See, Ordinance 1301.04(h) and 1301.04(e).

The proposed Ordinance also requires a patient to make his/her home available to inspection on demand by building officials, fire department and law enforcement officials at any time somebody is on the premises and without reference to any standard of probable cause to believe some violation is occurring. See, proposed ordinance, 1303.03(f).

B. The Ordinance seeks to prohibit a caregiver from transferring marihuana for medical use to his/her qualifying patients in his or her personal residence. See, proposed ordinance 1301.03(d). There is, of course, no such prohibition in the MMMA so the proposed ordinance is preempted in this regard by the MMMA.

Like home-growing qualifying patients, the ordinance proponents want to force caregivers to obtain a license -- in this case for a "*facility*" as defined in the proposed ordinance -- to cultivate marihuana for medical use. Unlike qualifying patients, however, a caregiver cannot home-grow but must grow in certain retail and industrial districts. See, 1301.07(b). This would dramatically increase the cost of marihuana for medical use -- which CPU expects is the real goal of the drafters -- because it would compel caregivers registered under the MMMA to buy or lease space in certain designated retail or industrial districts. Again, there is no prohibition in the MMMA against registered caregivers growing at home.

At the Public Safety Committee of May 13, 2016, Interim City Attorney Abood attempted to minimize the economic impact this would cause by suggesting that a group of caregivers could jointly lease a building, subdivide it for each caregiver's qualifying patients and spread expenses. This is a method that has previously been attempted by caregivers in the absence of any ordinance, resulting in arrests by federal authorities and incarceration of caregivers. As Council Member Dunbar suggested by way of question to Mr. Abood at the May 13th Public Safety Committee meeting, such a group grow would make the location and the cooperating caregivers a target for the DEA.

II. The Ordinance Proponents Seek to Eliminate Dispensaries in Lansing, but It Is Not Needed to Accomplish That Goal.

As noted above, this ordinance defines an entity called a "*provisioning center*" where medical marihuana may be stored and distributed. The operational restrictions on so-called provisioning centers all but ensure that none will exist in Lansing.

Under 1301.04(f)(7) of the proposed ordinance, a caregiver associated with a provisioning center can only provide medical marihuana to his/her own qualifying patients (under the MMMA a maximum of five) and only from the marihuana that is identified with the particular caregiver. This ensures that a single caregiver almost certainly would never establish a provisioning center because sales by a single caregiver, even with the state maximum of five patients, would not offset expenses to lease or buy a building and otherwise meet the stringent requirements the ordinance would impose on provisioning centers. In fact, the average caregiver registered under the MMMA serves 1.8 qualifying patients.

It would take a rather large group of cooperating caregivers to make a provisioning center economically viable. Even then, the provisioning center would not operate as a real business, like existing dispensaries, due to the requirement that a qualifying patient could only receive marihuana for medical use from his or her associated caregiver.

Effectively, this means the "*provisioning center*" is unlikely to have any regular business hours as any given caregiver is not going to be on the premises during what might otherwise be normal business hours on the off chance that one of his/her five or less associated patients is going to show-up to procure some medicine. In the unlikely event that even one "*provisioning center*" were established, a caregiver and a patient would undoubtedly agree to meet at the center at a specified time to conduct the transfer.

The licensing requirements for a provisioning center are onerous and largely unnecessary, but at present it appears that no provisioning center could comply with the insurance requirement set out in 1301.04(f)(13) of the proposed ordinance.

To the best of CPU's knowledge, it is not currently possible to obtain insurance in the marketplace for a medical marihuana business. For a short time, a few insurers were offering endorsements to insurance policies covering such operations, but ceased doing this when the federal government started suggesting that by extending such coverage, the insurers would be part of a criminal conspiracy under federal law.

To be clear, this discussion about provisioning centers is not offered because CPU supports them at this time, but only to expose the lie that the proponents of this ordinance actually intend in good faith to permit such facilities to exist.

If the view of City government is that dispensaries should not exist, they can been put out of business without a new ordinance. It would seem that the ordinance proponents want to be able to say that they will allow regulated dispensaries, knowing full well that none could lawfully exist under local law if this ordinance is adopted.

III. As It Relates to Patients and Caregivers, the Ordinance Will Be Ineffective.

The likely effect of the ordinance for caregivers and patients is that there would be, at least, close to 100% non-compliance with the licensing requirements.

To the extent any caregiver or patient were charged with a crime under the ordinance for acts lawful under the MMMA, that person almost certainly would be provided with a pro bono defense -- very likely by a CPU member, as a significant percentage of the CPU membership consists of criminal defense attorneys. No doubt, part of the defense would be an attack on the legality of the ordinance, itself.

We are not addressing the likely impact on dispensaries and how they would react because that is not CPU's issue. Moreover, as repeatedly noted above, dispensaries can be forced out of business without a new ordinance.

CPU has not attempted to set out all issues with the proposed ordinance -- and there are many more substantive and drafting issues -- but, rather, only the most egregious with regard to how the proposed ordinance conflicts with the MMMA.

CANNABIS PATIENTS UNITED

EDUCATION AND LOBBYING

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Vincent, Courtney

From: DavidandLeah Weathers <davidandleahweathers@aim.com>
Sent: Wednesday, June 01, 2016 8:09 PM
To: City Council
Subject: RE: Medical marijuana dispensary

To Whom It May Concern,

We are emailing you to support the clinic known as 'OMG! Our Miracle Garden LLC' on Mt. Hope Rd. The two of us just moved to Lansing from up north (Marion) and are supporters of medical marijuana. We understand that there are some area residents that are not in favor of having a dispensary nearby, but we feel that this is a valuable resource for patients who have been prescribed medical marijuana. Though not currently medical marijuana cardholders ourselves, we are interested in potentially becoming registered once we have found a local doctor, and having a convenient location to our home - we are renting from a longtime resident on Quentin Ave - would be invaluable to us.

Despite any negative feedback you have received from other community members, please know that there are some new and current citizens who do support businesses such as Our Miracle Garden - which is a very clean and professional business!

Thank you for your time,

David and Leah Kaye Weathers

David and Leah Kaye Weathers
davidandleahweathers@aim.com

Submitted @ mtg
6/10/16